The Compleat Lawyer:

OR,

A TREATISE

CONCERNING

TENURES and ESTATES

IN

Lands of Inheritance for Life, and other Hereditaments,

AND

Chattels Real and Personal.

AND

How any of them may be Conveyed in a Legal Form,

By Fine, Recovery, Deed or Words, as the Case shall require.

By Sir WILLIAM NOY of *Lincolns Inn*, late Attorney-General to his sacred Majestie King *CHARLES* the First.

Together with

Observations on the Author's Life.

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How any of them may be Conveyed

Observations on the Author's Law

THE LIFE OF Sir *William Noy.*

IT *hath been the approved practice of the best Historians, sometimes in short Characters, and sometimes in larger Descriptions, to represent the Natures, Sayings and Manners of those persons whose actions, recited in the series of their history, have rendred them any way more illustrious and more conspicuous then others; to the great satisfaction of attentive Readers, who are naturally apt to enquire and know as much as they can of the*

persons whose actions have any way drawn their attention: and upon the same ground usual to the Works of men eminent in the Commonwealth of Learning, to annex the Characters of the Authors, to give authority to what they have said, from a due representation of what they have done, and to adorn their Books with their Lives; hanging their Picture before the Title-page.

The greatest commendation that can be given this Book, is its Author; and the greatest Panegyrick upon the Author, is his Life: A Life that a healthy and strong Constitution promised eminent, and an indefatigable industry made so: begun in Cornwal, (where there hath been nothing ordinary in either Divinity or Law, these sixty years) improved at Lincolns Inne; where an apprehension quick and clear, a judgement methodical and solid, a memory strong, a curiosity deep and searching, a temper patient and cautious, a correspondence well laid and constant, an ability to invent what is sought or propounded,

pounded, to judge what is invented, to retain what is judged, and to deliver over what is retained; together with an honest bluntishness, as far from Court-insinuation, as a Courtly carriage, raised him to a reputation equal to his merit.

His Invention sifted Cases thorowly; understood its place in Law, with its petty circumstances, and was able to reply to an adversaries unexpected Objections: to understand his Clients Cause at first opening; to see the drift of his adversaries reasons at first urging. Neither did his Wit prejudice his Memory; nor the great heat required to the one, consume the moisture which serveth the other; his Figures, Idea's and Notions being numerous indeed, but orderly: nor both, his Discerning faculty, which brought that knowledge that lieth in Books as gold doth in Mynes, to the fire and Crucible; to the improvement whereof, nothing conduced more, then his Slowness of belief, and Distrust, the sinews of wisdom, which led him beyond modern Reports and Abridgements,

beyond late Tralls and Presidents, beyond partial Explanations and Commentaries, to ancient Customs and Usages, untrod Histories, authentique Records, indisputable Maximes and Principles: in all which, his pains verified his Anagram,

WILLIAM NOY.
I MOYL IN LAW.

Having but one great impediment in the way of his preferment, viz. *Taciturnity and Pensiveness, which (how melancholique soever a man is) is always displeasing, and commonly suspicious; a sullen aspect in the face, intimating a more sullen humour in the minde: crabbed looks, and melancholique humours, loosing those kindnesses which a pleasant converse, continual applications and gentilesses gain, being attended with that temperament of language, and way of moderating our discourse, called* μετρια, *whereby we manage our conversation with all that affability, courtesie, and obliging deportment, that*

that

that may bespeak us chearful without sulleness, and grave without austerity; owning nothing that carrieth with it either neglect, indecencie, or excessive freedom. An affected dis-respect seldom prospereth; it obliging not so much by its sincerity, as it provokes by its ill example, and that diminution it carrieth with it of other mens dignity.

He was (say the Historians of his time) a man passing humorous, but very honest; clownish, but knowing: a most indefatigable plotter and searcher of ancient Records: whereby he became an eminent instrument both of Good and Evil (and of which most, is a great question) to the Kings Prerogative. For during the times that Parliaments were frequent, he appeared a stout Patriot for the Commonwealth; and in the last, was an active opponent in the differences concerning Tunnage and Poundage: but when the dissolution of that, was in some mens apprehensions the end of all; no sooner did the King shew him the Lure of Advancement,

but

but quitting all his former inclinations, be wheeled about to the Prerogative, and made amends, with his future service, for all his former disobligements. The disingenuity of the Parliament, and his impendent necessity, would have put another Soveraign on extraordinary ways: but to King Charles it was enough, they were illegal. No extremity, though never so fatal, could provoke him to irregularities: yet whatever ways the Laws allowed, or Prerogative claimed, to secure a desperate people that would undo themselves, he was willing to hearken to: therefore for a Cunning man, the cunningest at such a Project of any within his three Dominions, he sends for his Attorney-General Noy, and tells him what he had in contemplation; bids him contrive the mode, but a Statutable one, for defraying the expence. Away goes the subtil Engineer, and at length, from old Records, bolts out an ancient president of raising a Tax for setting out a Navie in case of danger. The King glad of the discovery, as Treasure-trove, presently

ſently iſſued out Writs, firſt to the Port-Towns within the Realm, declaring the ſafety of the Kingdom was in danger, (and ſo it was indeed) and therefore that they ſhould provide againſt a day prefixed Twenty ſeven Ships of ſo many Tun, with Guns, Gun-Powder, Tackle, and all other things neceſſary. But this buſineſs is no ſooner ripened, then the Author of it dieth, Aug. 6. 1634.

Much to his advantage is that Character Archbiſhop Laud *gives him*; That he was the beſt friend the Church ever had of a Lay-man, ſince it needed any ſuch: (*and indeed he was very vigilant over its adverſaries; witneſs his early foreſight of the danger, and induſtrious proſecution of the illegality of the deſigne of buying Impropriations, ſet up by perſons not well-affected to the preſent Conſtitution:*) *And that of the Hiſtorian,* That he loved to hear Dr. *Preſton* preach, becauſe he ſpake ſo ſolidly, as if he knew Gods will, *To which I adde a paſſage, from*

the

the mouth of one present thereat. The Goldsmiths of London had (and in due time may have) a custom once a year to weigh Gold in the Star-Chamber, in the presence of the Privie Council and the Kings Atturney. This solemn weighing, by a word of Art they call the Pix; and make use of so exact Scales therein, that the Master of the Company affirmed that they would turn with the two hundredth part of a Grain. I should be loth (said the Atturney Noy, standing by) that all my actions should be weighed in those Scales, with whom all men concur, that know themselves.

And this was the first evidence of his parts, and the occasion of his reputation. Three Graziers at a Fayr had left their money with their Hostess while they went to Market: one of them calls for the money, and runs away: the other two come upon the woman, and sue her for delivering that which she had received from the three, before the three came and demanded it. The Cause went against the woman,

and

and Judgement was ready to be pronounced; when Mr. Noy, being a stranger, wisheth her to give him a Fee, because he could not plead else: and then moves in Arrest of Judgement; that he was retained by the Defendant, and that the Case was this: The Defendant had received the money of the three together, and confesseth was not to deliver it until the same three demanded it; and therefore the money is ready, let the three men come, and it shall be paid. A Motion which altered the whole proceeding. Of which, when I hear some say it was obvious, I remember that when Columbus had discovered America, every one said it was easie: and he one day told a company at a Table where he was, that he could do a stranger thing then that discovery; he would make an egge stand an end on a plain Table. The Speculatives were at a loss how it should be done: he knocks the egge upon the end, and it stands. Oh! was that all? they cryed. Yes (saith he) this is all: and you see how hard a thing it is to receive a thing in

the

the Idea, which it's nothing to apprehend in the performance.

He never pleaded that Cause, wherein his Tongue must be confuted by his Conscience. A Spanish Souldier would as soon take Pay against his King, as our Advocate against Truth: not onely hearing, but examining his Client, and pinching his Cause where he found it foundred; and warranting onely his own diligence. What others delayed, Mr. Noy *would bring to a speedie issue; shooting fairly at the head of the Cause.*

His Name was quickly up, but his Industry not so quickly down; being none of those that pleaded not by his Study, but his Credit: to confirm the old Sarcasm, That Physicians, like Beer, are best when they are old and stale; and Lawyers, like Bread, when young and new.

He proceeded on this Maxime, That Rules of State and the Laws of the Realm mutually support each other; *looking on those who made the Laws to be not onely disparate, but even opposite terms*

to

Maximes of Government, as true friends neither to the Laws nor Government.

He would inculcate a Rule to this purpose: That every person engaging in familiarity with another, should thorowly examine the designe and ends upon which he and others enter thereon, and carefully inquire into his own condition and abilities, and impartially judge how much he doth contribute towards the upholding of that amity; and accordingly as he findes himself to be of importance to his acquaintance, and subservient to the ends they have, in ambitioning his friendship, so far let him value himself, and expect to be valued.

AD-

ADVERTISEMENT.

There are two other Volume
Extant of this Author's,

VIZ.

His REPORTS, in Folio

AND

MAXIMS, or Princip
Grounds of the Laws
of *England*:

Which, with variety of oth
Law-books, are to be sold b
Samuel Speed, at the Rainbo
in Fleetstreet.

The Compleat Lawyer:

OR,

A Treatise

CONCERNING

Tenures and Estates in Lands of Inheritance for Life, &c.

How were the multitudes of people at the first divided?

Into Families, Commonwealths, and Kingdomes.

To what end?

To live godly, peaceably, and quietly together.

How is that performed?

By keeping the Law of God, which we call Religion, and by executing vertue,

and punishing vice, by which vertue and good manners do spring.

What doth best uphold and maintain these things?

The Law.

How manifold is that?

Two-fold, *viz.* The Law of Nature, and the Law written.

What is the Law written?

It is either Divine or Civil.

What doth the Civil Law work?

A defence and encouragement to the good, and a bridling and punishment to the evil.

What else doth it work?

A security to the life of man, and quiet enjoying of *Meum* and *Tuum*.

How came in Meum and Tuum?

By the Law of *Jus gentium*, whereby right and property to Lands, Tenements, Goods and Chattels, are belonging to men.

How doth every Subject in England claim and hold his Lands and Goods?

By Estates in Law.

How many Estates in Law are there in Lands and Tenements?

Three, *viz.* Estates of Inheritance, Franktenement, and Chattels reals.

How are Estates of Inheritance divided?

Into

Into Fee Simples, and Fee Tayl.

How are Fee Simples divided?

Into Fee Simples absolute, and Fee Simple Conditional.

What is an absolute Fee Simple?

When Lands are given to me, and to my heires for ever.

What is a Fee Simple Conditional?

When Lands are given to me, and to my heires for ever, upon condition I doe such or such a thing, &c.

How are Estates Tayl divided?

Into Tayles general and special, and into Tenant in tayle after possibility of issue extinct.

What is an intayl general?

When Lands or Tenements are given to *I. S.* and to the heirs of his body lawfully begotten, or to be begotten.

What is an intayl Special?

When Lands or Tenements are given to a man, and to his wife, and to the heires of their two bodyes, between them lawfully begotten.

How is Tenant in tayl after possibility of issue extinct?

When Lands are given to a man and his wife, and to the heires of their two bodyes between them lawfully begotten,

if the man or wife die without issue between them, the Survivor is Tenant in tayl after possibility, &c.

Is such a Tenant punishable of wast or no?

No, he is not punishable of wast; yet he may forfeit his Estate by granting a greater Estate to another than he hath himself.

May other Tenants in tayl forfeit their Estates?

No, unless they commit Treason.

How is franktenement divided?

Into four parts, *viz.* Tenant by Courtesie, tenant in Dower, tenant for his own life, and tenant for another mans life.

How are Chattels divided?

Into Real and Personal.

What is a Chattel real?

A term for yeares, the ward of lands, and tenant at will.

What are Chattels personal?

All manner of Goods, Corn, Cattel, Houshold-stuff, and utensills whatsoever.

How doth a Fee simple in Lands or Tenements passe from one to another?

It may passe by a Fine, or by Deed, in raysing of a use upon valuable considerations,

tions, or by deed with Livery of seisin, or by a will in writing *sealed* since the Statute of Wills, or by a Deed without livery, inrolled within six Moneths after the date therof, by the Statute in the 34 year of *H.*8. and by a reversion in fee by Atturnement. But of things incorporate, there can be no Actual Livery, but they passe by grant in writing onely, or by lineal descent.

May Tenant in Fee Simple convey his lands and tenements from his wife and heir?

Yea that he may, to whom and by what Estate he will, except it be in *mortmaine*, *contra statutum* in the seventh of *Edward* the first, and excepting such right and Dower as his wife hath in the said lands.

May he charge these lands?

Yes, either by a yearly Rent with Clause of distresse, which is called a Rent-charge, or by an Annuity, or by Statute; and also if he dye, these lands shall be assets to pay his debts.

Is there no forfeiture of these lands?

None, except he commit felony or treason.

May they any way escheat?

Yes, if the tenant die without heire general or special, then the lord of whom they are holden shall have the same by escheat.

What is the Law since the Statute in such cases?

If at this day there be Lord and Tenant in fee Simple by Chivalry and twenty pence rent, If the Tenant enfeoff an Estranger of the said land, the Estranger shall hold of the Lord by the said services and rents as the Tenant did hold, and the Feoffer or seller shall be excluded, and be not meant at all.

What if the said Tenant maketh a Feoffement of the said land to another, without expressing to whose use?

Then it shall be to the use of the Feoffer and his heires, except a valuable consideration be given for the land, then it shall be to the use of the Feoffees.

What if the Tenant since that Statute doth enfeoff a stranger of part of the land?

Then the stranger shall hold of the Lord *per particular Morum, viz.* The Rent shall be apportionated.

As if there be twenty Acres of Land, and twenty shillings Rent, the Purchasor shall hold by three shillings Rent for three Acres.

But if there be an entire service, that cannot be apportionated; as a Horse, a hawk, *&c.* The Lord shall have the whole.

What

What if the purchase be of the moyetie of the whole land?

There shall be no apportionallment of the Rent, *&c.*

What if the Lord since that Statute purchase parcel of the tenancy?

By that purchase all the entire annual services be extinct, except it be for the profit of the Common-wealth, then it remaineth, otherwise it is extinct. For that purchase, read *Bruertons* case in the sixth part *de Lo. Cooke.*

What if the Lord purchase parcel of the land where the Rents and services are apportionated?

Then the Rents and services shall be apportionated.

Put a Case thereof.

If there be Lord and Tenant of six Acres of land by six pence Rent, and sute of Court, if the Lord purchase two Acres, the Rent shall be apportionated; but otherwise if the Rent and services be entire, as sute of Court, homage, *&c.* Extinct.

What if these entire services come to the Lord of part of the land by the meer Act of God, or of the Law?

Then the intire services shall remain to the Lord.

Put a Case of that.

If there be Lord and Tenant of four Acres of land, by a Hawk, homage, fute of Court, and Herriot, in this case, if one of these Acres descend to the Lord, the whole services remain.

But if the Lord had purchased the said Acre, or released to the Tenant the services of the said Acre, all the services alwayes are extinct.

Also in this case, if the Tenant doth enfeoff any Estranger of one of those Acres, the Feoffee shall hold the whole services.

But otherwise if the services may be apportionated, as of Rent, Common or Proper, &c. And thereupon are great diversities between Rent-service and Rent-charge.

What apportionalment is there of Rent-Charge?

Rent-Charge is now at this day as Rent-service was before the Statute: That if the party that hath the Rent, purchase any part of the land charged, the whole Rent is extinct.

May a tenure be reserved upon a gift in tayl sithence the said Statute?

Yes, look how a Tenure may be created and reserved upon lands and tenements

in

fee-Simple before the Statute, ſo it may
e of lands given in the tayle hithence the
id Statute.

What if the Donor reſerveth no ſervice upthe gift in tayl?

Then the Donee ſhall hold by ſuch ſerices as the Donor holdeth over.

How is this to be underſtood?

Where the Reverſion in fee-Simple remaineth in the Donor.

What if the Reverſion be granted over?

Then the Grantee thereof ſhall hold his everſion of the chief Lord.

Is the King tyed by the Statute of Quia mptores terrarum?

No, the King is not ſubject to that tatute.

Upon what things may a tenure be referred?

Properly upon a Feoffement, or gift in ayl, in Lands or Tenements, and of Corporate things, into which may be an Entry or manual occupation.

Of what things may no tenure be referred?

Upon incorporate things, as Courts, Rents, Wayes, Piſcaries, and ſuch like.

Of what things in nature muſt the tenure be?

Of

Of things which are either profitable t
the Feoffer or donor, or to the Commo
wealth.

*May the ſervice upon the tenure be reſe
ved to be done by an eſtranger?*

They cannot properly be ſo reſerved.

*Can the Tenant hold his Land by two t
nures?*

No, one parcel of Land cannot be ho
by ſeveral tenures.

*What tenure and ſervice may be reſerv
upon an Eſtate of franktenement?*

Commonly upon an Eſtate of frankte
nement nothing is reſerved but Rent, an
to that Rent fealty is incident by prope
Right.

What is Franktenement?

In Eſtate for ones life, or for anothe
mans life.

How doth it paſſe?

Either by writing, or by paroll; and up
on the ſame generally, there muſt be a li
very of ſeiſin.

*How many manner of Eſtates for life ar
there?*

There are four, Tenant for his own life
for another Mans life, Tenant in Dowe
and by Courteſie.

*Have theſe like power as the other Tenant
have?* No

No, the ſaid Tenants for life, and te-
ts for yeares may not grant a greater e-
e to another of the ſaid Lands, than he
h himſelf; nor may not commit waſt, nor
rge nor incumber the ſaid Lands, longer
n they have eſtate therein.

What doe you call waſt?

Waſt is properly any thing that is done,
committed in the ſaid land to the diſ-
eriting of the Leſſor, or of him in the
erſion.

Who ſhall puniſh waſt or forfeitures?

He that is next in reverſion or remain-
r in the ſaid land of an Eſtate of inheri-
nce.

By what Law?

Tenant in Dower, and Tenant by the
urteſie, before the ſtatute of Glouceſter,
d the reſt by the Eſtatutes.

*What call you a Reverſion or Remain-
r?*

The eſtate that dependeth, and is to
me in poſſeſſion after theſe particular E-
ates ended.

*How doth a Reverſion paſſe, ſithence there
n be no livery of ſeiſin without licenſe of the
rretenant?*

It doth paſſe properly by Deed in wri-
ng, and Attornement of the particu-

lar

lar Tenant, or by fine, &c.

How doth a remainder passe?

Alwayes it beginneth with the pa
cular Estate, and dependeth upon the sa
otherwise it is commonly not good, un
it be by devise, or Will; and it must be
when the particular Estate endeth, or
it is naught.

Put me a Case upon that point.

If a lease be made to *I. S.* of Cer
lands for life, the Remainder thereof to
right heires of *I. N.* this is a conting
Remainder: for if *I. S.* dye in the life
I. N. the Reversion thereof is void; oth
wise if *I. N.* dye in the life of *I. S.* and h
an heire, then the Remainder is good.

*What difference is there between a Re
sion and Remainder?*

Great difference: The Reversion is
remnant of the Estate, that the Donor
leasor reserveth in himself, and passeth
with the particular Estate.

But the Remainder alwaies passeth w
the particular Estate at the first Creati
thereof; but being created, may passe
Reversion without the particular Esta
Also he that cometh to lands by Rema
der, cometh in as a Purchasor, and shall
be in ward; but the other in Reversion
be in ward.

What other estates are there unmentio-
?

There is Tenant by the Statutes Mar-
nt of the Staple, Tenant by Elegit, Te-
t for years, Tenant at will, and Tenant
Sufferance.

Doth an action of waste lye against these
ants?

No, but onely against tenant for years;
he subject unto the like law, as Te-
t for life is.

May an estate of Remainder depend upon
state for years?

Yes, very well; and then if the Re-
inder be for one life or more, there must
livery of seisin made to the Tenant for
rs at his first entrie.

If Tenant for years dye, who shall have
terme?

If he do not grant it in his life, nor de-
e it by his will, his Executors or Admi-
trators shall have the same.

How may it pass?

Either by writing, or by paroll; and it
ll be assetts to pay the owners debts, if
dye possessed thereof.

What do you call assets?

There is assets intermains, which is goods
d Chattels of the Descendent; and there

is

is aſſets per diſcent, which is land i
Simple; and both theſe ſhall be lyab
pay debts ſo far as they will goe.

What do you mean by Deviſe or Will?

When Lands, Goods, and Chattels
deviſed or given by the laſt Will and T
ment of any.

May Lands be ſo given without licenſe

Yes they may, ſithence the Statut
Wills, 32 *H.* 8.

How was the Law before that Statu

No man before that Statute could
Lands or Tenements by his Will in
ting, to make an Eſtate of frank-tene
or upwards, unleſs the ſame were in
viz. in the hands of the Feoffees.

How is the Law ſithence that Statute

Sithence that Statute a man may d
all his lands in ſoccage, and two part
his lands holden in Knights ſervice.

Why may he not deviſe the other t
part?

Becauſe it ought to deſcend, that
lord be not defrauded of his Tenure,
Ward, Marriage, &c.

How be Wills made?

Either in writing, or elſe without
ting, and then it is a Nuncupative W
but no Eſtate in Lands for life, or upw

will paſs by a Will Nuncupative, which is without writing.

What general learning is elſe of Wills?

The laſt Will is alwayes of force, *Quia voluntas eſt ambulatoria, & non conſummatur uſque ad mortem Teſtatoris*; and then the intent of the deviſor ſhall be much taken therein, as far as the words will extend.

What do you mean by the word uſe?

I diſtinguiſh it thus, that before the Statute of 27 *H.* 8. one man might have the lands, and another the uſe of the ſame lands.

What did invent thoſe uſes?

Two things, *viz.* Fear and fraud; feare in the time of War and troubles, and fraud to defeat the Lords of the Fee, and Creditors.

How many manner of uſes are there?

Two, *viz.* in Eſſe, and to come in contingencie.

How in Eſſe?

Either in poſſeſſion, or reverſion, or remainder.

How in contingencie?

Uſes which may come, and after be in poſſeſſion, reverſion, or remainder, if they be not cut off or barred.

What things are incident to thoſe uſes?

A. Con-

Confidence in the persons enfeoffed, w
purity in estate.

Did they good or harm in common Law?

They did more harm than good; whe
upon divers Statutes were enacted,
10 R. 2. the 4 H. 4. 10 H. 7. the 11 H.
and 19 R. 3. were ordained, to suppress t
mischiefs that uses brought in.

*Were those mischiefs Remedyed by th
Statutes?*

No, they were not, untill the Statute
27 H. 8. by which Statute uses were tra
ferred into possession; so that now upo
creating of an use, it is presently turned i
to possession, and the Feoffees are but co
duit-pipes to lead the uses.

How was it before that Statute?

Before that Statute, he that had t
possession, *viz.* the Feoffee, might sell th
land from *Cestui que use*, and he had but h
remedy in the Chancery.

Are there any uses now in law?

Yes, but they are transferred *ipso fac*
into possession, and hereupon the Feoffe
is excluded.

Why are they used?

Properly to estate wives: for the Hu
band cannot enfeoffe or grant immediate
to his wife, because they are but one perso
in the law. *How*

How muſt ſuch an Eſtate be made?

The Husband muſt enfeoff two or three to the uſe of his wife for life, or otherwiſe.

Why muſt he infeoff two at the leaſt?

Otherwiſe one feoffee hath ſuch an eſtate thereby, that his wife cannot have her Dower.

May not the Subject hold lands of the King?

Yes, all the Lands of England are holden either mediately or immediately from the King as Lord Paramount.

How may they be holden of the King?

By Knights ſervice in Capite, by ſoccage in Capite, by Knights ſervice won in Capite, by Soccage won in Capite; By Grand Serjeanty, and by pretty Serjeanty.

What difference is there in theſe Tenures?

Many great Differences. All Lands holden in Capite in Chivalry, do draw Ward, Marriage, and Relief, *viz.* a Knights Fee is five pound, and ſo ratably, and it cauſeth all other lands holden of meaſne Lords to be in ward. Alſo the tenant cannot grant theſe lands for life, or for any other higher Eſtate, without

licenſe of the King, nor his wife cannot marry without licenſe; and if they doe, they ſhall anſwer the King meaſne profits. And if a Tenant enter, and ſell, without licenſe, he muſt pay for his licenſe one years profit thereof. But to have a licenſe before he enter, and ſell, is but the third part of one years profit. Alſo the heire having been in ward, when he cometh to full age, muſt ſue livery, which will coſt him one yeares profit. And if he be at full Age at the death of his Anceſtor, then he muſt have a primer ſeiſin, which is of like charge.

What if it be holden in Soccage in Capite?

That draweth not Ward, &c. nor any other lands; and the Relief is one yeares Rent, but the tenant muſt ſue his livery or primer ſeiſin of thoſe lands onely.

What of Lands in Knights ſervice onely?

That draweth onely Ward, Marriage and relief, only for that land, in caſe of a common perſon, but that the King muſt have his prerogative without Priority or poſteriority.

What do you mean by priority?

That if a common person holdeth several lands of two Lords by Knights service, the eldest tenure, viz. he that made the first Feoffment, which is not so in the Kings case.

How may one otherwise hold of the King?

He may hold by grand Serjeanty, and by petty Serjeanty.

How doe they differ?

Grand Serjeanty is Knights service and more, for the relief thereof is the value of the land by year; and petty Serjeanty is soccage in nature.

Put a Case thereof.

He that holdeth of the King to find a man to serve in the Warrs by forty dayes at his own cost, holdeth by grand Serjeanty. But he that is to finde a Horse, or such a thing, to serve as aforesaid, that is petty Serjeanty, because it is not to be done by a mans body.

Also the Tenant may hold of the King, or of a common person, by Escuage, Homage, Ancest. Or by Homage, Fealty, and sute of Court.

What is the meaning thereof?

Put me a case thereof.

Eſcuage uncertain is Knights ſervive, and eſcuage certain is ſoccage. Homage-Anceſtor is alwayes between the Feoffor and Feoffee and their heirs; the other Homage is ſomtimes joyned to Knights ſervice, and ſomtimes to ſoccage. And ſealty is alwayes incident to all manner of Tenures and Eſtates.

Of what nature are theſe ſervices?

Some of them are valuable, and ſome not.

Upon what cauſe were they reſerved?

To keep a knowledge between the Lord and Tenant in lieu and recompence of the land.

What remedy is there if the Tenant doe not his ſervices?

The Lord may of Common right diſtrain for them; and if the Tenant dye without heir general or ſpecial, or be attainted, the Lord ſhall have the land by Eſcheat, as having no Tenant to doe his ſervice. And thus much briefly of Eſtates, Tenures, and Service.

Why hath the Lord the ward of the body and lands of the heire being not twenty one years of age?

Becauſe if the land be given to the Tenant to do ſervice of Chivalry, and when

when the Tenant dyeth, his heire being within age, for that ſuch a Tenant cannot doe the ſervice, the Lord will have the body and land until he come to age.

When ſhall ſuch an heir be ſaid to be in ward?

When the Father dyeth ſeiſed of lands holden in Knights ſervice, and his heire being a Sonne, and within the age of one and twenty yeares, and if it be a daughter, within the age of fourteen yeares, the Lord ſhall have the ward untill ſixteen yeares by the Statute-law.

Why if the father dye ſeiſed but of a Reverſion of the ſaid land, an eſtate for life or yeeres then being on foot?

The Heir ſhall be in ward for his body.

Is it ſo if the Father dye ſeiſed of a Remainder?

No, the heir there ſhall not be in ward, if the Tenant for life be living.

What other differences are there?

If lands holden in Knights ſervice come to the heir by deſcent, he ſhall be in ward; but if it come by purchaſe, he ſhall not be in ward.

Put a caſe thereof.

If the Father and Sonne purchaſe lands, holden as aforeſaid, to them, and to the heires of the Father, and the Father dieth, the Sonne within age ſhall be ſaid to be in by purchaſe, and not by diſcent, and ſhall not be in Ward. But by the Statute in the 30th of *Hen.* 8. if it be holden by the King, he ſhall be in Ward.

When ſhall the heir be ſaid to be out of ward?

If it be a Male, when he accompliſheth the age of twenty yeares; if it be a Female, ſhe muſt be full fourteen yeares at the death of her Anceſtor, otherwiſe the Lord will have her Ward untill ſhe be ſixteen by the Statute.

And alſo, if the heire being in Ward, and within age, be made a Knight, then he ſhall be out of Ward: But otherwiſe if he be made a Knight in the life of his Father.

What is the Lord to have by his Tenant when he cometh to full age?

He is to have the value of his Marriage, if he doth not take a Wife during his Nonage; and the double value of his Marriage, if he take a Wife during his Nonage; and the double value

of

of his Marriage, if he take a wife during his Nonage, if the Lord tender him a Wife without disparagement. But note that the first tender is not material.

How shall that value be tryed?

By a Jury, sworn to try and value the same.

Shall the heir in Soccage within age be in ward?

Yes, until he come unto the age of fourteen yeares, and then the Guardian is to account unto him for the profits of the said Lands; and after the age of fourteen yeares, he is to take the profits of his lands by his *Procbein amie.* But the Guardian in Chivalry is not so to doe, but to have the Ward of Body and Land to his own use untill the age aforesaid.

Who ought to have the wardship of the heir in Soccage?

If his Lands doe descend unto him by the Fathers side, his next Uncle or friend on the Mothers side, to whom the Land may not descend: *Et sic è converso.*

What is the Relief of Lands in Soccage?

The value of one years Rent.

What if a man be disseised of his Lands and Tenements, or dispossessed of his Goods and Chattels, what remedy hath he in Law?

His Remedy is either to enter into the Lands and Tenements, if his Entry be congeable, as if there be no discontinuance nor descent cast; or else to bring his Action, and so to recover the same by course of the Law; upon every which Action there is a proper and special Writ ordained.

How many manner of Actions are there?

There be Actions real, and Actions personal, and Actions mixt.

What do you call Actions real?

Some are possessory, and some are Ancester: the first being where the plaintiff hath been seised, and is disseised; and the other where the plaintiff was never seised, but some of his Ancestors, whose next heir he is.

What

What shall the Plaintiff recover in real actions?

In a real Action the Plaintiff shall recover the things in demand.

For whom and against whom do these actions lye by law?

Alwayes by, or against Tenant for life.

Shall the Plaintiff in these real Actions alwayes recover Costs and Dammages?

In some of these Actions he shall, in some not.

How shall he know what Action doth lye properly for every demandant?

That is great learning, and a long discourse.

Let me somewhat understand it in general?

First you must note that there are some Writs onely for Tenant in Fee-Simple, as a Writ of Right, of *Ayel*, *Besaiel*, *Cozenage*, *Nuper obiit*, and such like, as *Natura Brevium* will shew thee.

Also there are some VVrits onely for Tenant in Tayle, and the Donor, as a *Formedon in remainder*

remainder, discender, and in reverter.

The first for Tenant or heir in tail, the second for him in the Remainder, when there is no heire, and the intayled land ought to come unto him by his Remainder.

And for the Donor, when both the other do fail, and for want of heir or remainder, the land ought to revert or come back to the Donor.

And some other writs do lie for Tenant for life, against Tenant for term of life, and the writ of *Novel Disseisin*, and all the writs of Entrie in degree as the cause lyeth, *viz.* That the writ of Entrie *sur disseisin*, the writ of Entrie in the *Per*, *Cui*, and *Post*; and in all these dammages are to be recovered, and not commonly in the former.

How are these and the former to bee tryed?

The writ of Right being the highest writ in Nature, lyeth where all the rest fail, and is to be tryed by battel and grand Assise; and the issue is by joyning the mise upon the meer Right, and the rest are to be tryed by verdict of twelve men, unto which the parties may have their due Challenge.

What

What is the nature of Actions personals?

It is for the most part to recover Costs and damages for the thing in demand, and are to be tryed by verdict as aforesaid.

Recite some of these writs for actions personal.

There are many, as a writ of Trespasse, of Debt, Accompt, Deceipt, Detinue, Covenant, *&c. Vide Natura Brevium.*

How else do the real and personal actions differ?

In Real actions, the land must be summoned, and the view taken. But in personal Actions, the person of the Defendant must be summoned.

What are actions mixt?

They are part in realty, and part in personalty.

Recite one thereof.

There is the Action of waste, in which the place wasted shall be recovered, and treble damages.

How and by whom are these tryals to be executed in Law?

They are executed two wayes, either by Judges, *which ought to be twelve*, or by Jurors *lay men*, which ought to be twelve and Free-holders.

When

When by the Judges?

When the Counsel in Law of both sides do demurre in Law, that is, resteth upon a meer point in Law, that shall be tryed by Judges.

When by a jury?

When the said Lawyers joyn upon an issue in *fait*, which must be tryed *juxta probatum & allegatum*, viz. By evidence and witnesses.

Where shall the tryal in fait be?

In that County where the Jurors may take best notice of the matter; *nam ibi semper debet fieri triatio, ubi Juratores meliorem possunt habere notitiam.*

How is that meant?

As when one is robbed in one County, and the goods are found in another County; or wounded in one County, and dyeth in another County, sometimes the Counties shall joyn together if they may.

You have reasonably satisfied mee in this matter, perceiving thereby that the law is the life and sinewes of every Common-wealth: But what doth your law consist of?

It consisteth of a positive law, of Custome, and of Statute.

What

What do you call the positive Law?

That which was the first Law, before Customes or Statutes did alter the same.

Shew me some example of your positive Law.

There is a positive Law in England, that a descent doth toll an Entry; that between some Tenants the survivor shall have the whole, if no Act be made to the contrary; that the eldest sonne shall inherit, and all the daughters by equal portions. *Et sic de cæteris.*

What do you call Custom?

Custom may be in free land or in Copyhold land.

How in one, and how in the other?

By the Custom in certain Burroughs, which is called Burrough-English, the youngest son shall inherit. And in Gavelkind all the sonnes: *& sic de cæteris.*

And in Copyhold Land the words *sibi & suis* do create an estate of Inheritance; and the wife of a Copyholder that dyeth seised of his Copyhold Lands, shall have her free Bench during her Widdowhood.

How are these customs maintained?

The

The life of a Custome is use and continuance, so that it be not altogether against reason.

What do you call your Statutes?

Acts and Lawes, which are established by Act of Parliament, *by the King, the assent of the Lords Spiritual and Temporal, and the Commons of the Realm.*

To what end are they made?

They are made generally either to abridge the power of the Common-law, or else to enlarge the same.

Was the Common-law defective before these Statutes?

No, not altogether defective, but the Law hath been by great wisdome altered, or at least increased, or abridged, according to the offences of the Subjects growing and increasing from time to time.

Shew me some examples thereof.

At the Common-law, the counterfeiting of the Great Seale of this Realm was Felony, and now by Statute it is Treason. So the cutting of a purse was but Trespasse, and afterwards the losing of his thumb, and now Felony: and so of divers other things.

Have

Have theſe Statute-laws amended or paired the Common law?

Where it hath not altered the poſitive Law, but hath only increaſed or decreaſed the puniſhment thereof, it hath done great good; but where it hath altered the Common Law in ſubſtance, it hath done great harm.

Shew me an example where a Statute hath altered the Common law?

Amongſt others, I will ſpeak onely of the Statute of *Weſtmin.* the ſecond, of *Entails.*

Did that Statute good or harm?

In my opinion much more harme than good to the Common-wealth and Subjects.

Shew me ſome of the conveniencs and inconveniences.

The firſt cauſe of that Statute was to continue lands in the iſſue in tayl, or in him in remainder *ſecundum voluntatem Donatoris*, which now may be cut off by fine and recovery.

Secondly, if the Father dye farre in debt, theſe lands will not be lyable to pay his debts; and thus ſometimes the Creditor is undone, and many times defrauded.

Thirdly,

Thirdly, no man can take any good Eſtate from the Tenant in Tayl contrary to the Statute of 2 *H.* 8. but he must be at the charges of a fine and Recovery whereby the eſtates of poor men are deſeated.

Fourthly, if the Father commit felony, the ſonne ſhall have the Lands; which is an encouragement to evil.

All which as it ſtandeth, in my opinion, hath brought more harme than good as Purchaſors defeated, Leaſes evicted, Eſtates and grants upon good conſiderations avoyded, Creditors defrauded, offenders emboldened, and divers other inconveniences.

I underſtand this, and the Law in the ſame ſort in the reſt. But how may eſtates in tayl be cut off contra voluntatem Donatoris? *and I will trouble them no more.*

Alwaies the donee in tayl in poſſeſſion, by a gift in tayl by his Anceſtors, by a fine duly executed, may cut off that intayl, and conclude parties and parties, *viz.* thoſe who are parties to the ſame fine, and their heirs.

If it be with Remainder over to perſons named in the Deed, then the donee needeth a fine with Recovery to make it ſure.

ſure, yet the fine is good as long as the firſt Donee hath iſſue living, and doth bind him in the remainder, if he maketh not his claim within five years after his Title accrued.

But by a Recovery with a fine it is barred preſently after the perfecting.

How muſt this fine and recovery be ſued out?

Firſt, there muſt be a Recognition of the Seller, which is the Cognizor, by *Dedimus poteſtatem*, or in the Common Pleas before the Judges, to the Buyer called the Cognizee, of the nature and quantity of the land, and then finiſhed accordingly to make him Tenant of the land. Then take a *Præcipe quod reddat*, or a Writ of *Entry* in the *Poſt* muſt be brought by two ſtrangers againſt the ſaid Tenant, and he muſt vouch the Conizor, *viz.* the Tenant in tail, and he muſt appear by Atturny or in perſon, and vouch the common voucher, and ſo the Tenant to hold in quiet poſſeſſion, and the Conizor or Tenant in tail to recover over ſo much land: and this recovery over (ſo purſued) is the reaſon of the Law, and called the double Recovery.

What is the ſingle Recovery?

Such a Præcipe or Writ of Entry in the *Post* muſt be brought againſt the Tenant in tayle, and he muſt vouch the common vouchee, which muſt appear as aforeſaid, and confeſſe the Warranty.

Why is this not ſo good as the other?

Becauſe it behoveth there the Tenant in tayle to be ſeiſed of the eſtate tayle at the time of the Recovery: for if he be ſeiſed of any other eſtate at the time of the Recovery; as if he firſt diſcontinue the tayle, and ſo be ſeiſed of a Fee-Simple at the time of the Recovery, then the Recovery is void.

Alſo a Collateral warranty from the Anceſtor of the Tenant in tayle, which Anceſtor dying without iſſue, and the ſaid Warranty deſcending upon the ſaid iſſue in tayle, is a bar alſo of the tayle, if he make not his claime in the life of his ſaid Anceſtor.

If the remainder aforeſaid be in the King, ſhall the King be barred as aforeſaid?

This was ſomewhat doubtful before the Statute of 34 and 35 *Hen.* 8. But ſithence that Statute, it is no diſcontinuance

nuance of the tayle, nor bar to the Tenant in tayle, nor to the King in Remainder; yet the Law maketh a difference at this day, if the King give lands in tayle, with the Remainder or Reverſion in the King, a Fine or recovery will not bar that entayle.

But if a common perſon give lands in tayle without a Reverſion or Remainder in the King, that entayle may be cut off by a Fine and Recovery. And ſo the difference is, when the gift is from the King, and when from a mean perſon. And thus much generally of entayled lands.

I pray you put me ſome more differences between the Prerogative and grant of the King, and of a mean perſon; and firſt touching his perſon.

Firſt, the Kings Majeſty hath two bodyes, *viz.* a Natural and a Politique body.

Where and when hath he a Politique body?

For three cauſes, viz. *Cauſa Majeſtatis, neceſſitatis, & utilitatis.*

In the firſt, he cannot give, nor take, nor grant, but by matter of Record.

Secondly, to avoid *inter-Regnum* and Nonage, &c. that body cannot dye.

Thirdly, to take lands by descent; and in that case the half blood cannot hurt. *Vide Cook, Calvins* case.

What is the meaning of all this?

That the King or Queen of *England* in their politique bodies cannot be disabled, as by Death, Nonage, Marriage, or any such like, as a common person may be.

What of his natural body?

He may have lands by descent, and purchase as a common person may do, by way of Remainder or matter of Record.

What is his Prerogative in grants made unto him, and in grants made by him?

It is a ground in Law, *quod nemo potest plus juris ad alium transferre quam in ipso est.* And further, nothing can passe from the King, nor for the most part to the King, but by matter of Record, *viz.* by Letters Patents under the great Seal; and that the King cannot passe any thing by livery of seisin, nor by matter in fait, nor cannot disseise, nor be disseised.

Also it is a Maxim in Law, *quod nul-*

lum tempus occurrit Regi, that there ſhall be no Laches nor Eſtopples in the King for any Right or Title contrary to his expreſſe grant.

Then it ſeemeth that grants made from the King ſhall be taken ſtrictly?

Yes, the King muſt not be deceived in his grant, and the thing muſt be named, and expreſly ſet down; for things not named will not paſſe by this word Appurtenances; and the grant ſhall not be taken ſtrictly againſt the King, nor largeſt for the Grantee, as in a common Perſons caſe.

What things in a common perſons caſe will paſſe by this word Appurtenances?

An Advowſon appendant, common Appendant, or appurtenant, and by reaſon of Vicinage, wayes, and ſuch like.

What things may paſſe by the grant of another thing, as incident thereunto?

Many things may paſſe by the grant of another thing, without ſpecial naming of the ſame.

As a Rent by the grant of the Reverſion; by grant of a mannor, the Hundred-Court or Leet, and the ſervices; by grant of a Fair, the Court of Pypowder, and many things elſe in the ſame nature.

Which be things corporate and incorporate?

Things corporate are whereof there may be an Actual poſſeſſion, and entry thereunto; as of a Mannor, a Houſe, Lands, Tenements, and ſuch like.

Which be things incorporate?

Things incorporate are Rents, Courts, Services, Common, and ſuch like; and theſe may be appendent, appurtenant, or belonging to corporate things, as lands and ſuch like.

What do you call common?

It is the depaſturing of one mans Cattel in the Lands of another man, in which the commoner hath no Eſtate, but it is according to the nature of the common claimed.

How many ſorts of commons are there?

Four: Common Appendent, Appurtenant, In groſſe, and by Reaſon of vicinage.

How do they differ?

Many wayes: Common appendent and by reaſon of Vicinage cannot be but by Preſcription, time out of mind; but the other two may begin at this day.

Alſo Common appendent belongeth properly

properly to arable land, or to meadow, or paſture that was anciently arable land; and it muſt be uſed with ſuch Cattel as are levant and couchant upon the ſame lands, *viz.* the ſame both in Summer and Winter; and with ſuch Cattel as may hide and gain the lands, *viz.* ear and muck the ſaid lands, and not with Hogges, Goates or Geeſe.

But if the commoner purchaſe any part of that land, or the tenant ſell any part thereof, the common ſhall be apportionated: But if the commoner buy all the ſaid lands by an equal eſtate, with the commoner, the common is drowned; and common appendent cannot be ſevered or granted from the land; otherwiſe of appurtenant. But if the commoner appurtenant purchaſe any part of that land, the whole common is extinct, becauſe it is againſt common right, and common appurtenant may belong to any, and for all manner of Cattel *ſans nombre*: ſo as the uſage and claim of either of theſe commons ſheweth and declareth what manner of common that is.

Common in groſſe may be by grant or preſcription to have common in ano-

ther mans Lands with twelve Oxen, or twelve kine, or leſſe, to a certain number; and that may be granted over to another.

Common by Reaſon of Vicinage is when two Seignories or Lordſhips, and the Tenants thereof, have uſed time out of minde to common together in their common or fields in the fallow or common time, by reaſon of their adjoyning, and want of incloſure: and this common is of the nature as common appendant, and the one Seignorie or Lordſhip may incloſe from the other, and drive or keep the ones Cattel out of the others Seignory or Lordſhip; but the one may not ſtaff-drive their Cattel into the others Seignory or Townſhip; and the one cannot have an Action of treſpaſſe againſt the other, if the ones Cattel wander, or voluntarily go and depaſture the others Seignory or Lordſhip.

Quære if the one may incloſe part of their ſaid Lands from the other, and leave part thereof for common; *vide Tyrinhams* caſe in *Cook*. Alſo none of theſe commoners can have an Action of Treſpaſſe againſt an eſtranger which

ſhall

ſhall do treſpaſſe there, nor is to take his common otherwiſe than with the mouth of his cattel. *Quere* if the Commoner may trench the ground, to looſe out the water that hurteth the ſaid Land, Stat. 12 *H.* 1.

Make me I pray you better to underſtand briefly what Tenant in Dower is?

Dower is ſuch an Eſtate for the third-foot during the wifes life, in all ſuch lands and tenements as her husband was at any time ſeiſed of an eſtate of inheritance during the coverture.

Is the wife to have a third during her life of all ſuch Lands and Tenements?

No, he muſt be ſole ſeized thereof, and not in joynt-tenancy.

Secondly, he muſt have the Franktenement, and the inheritance of the ſaid land in the ſaid Barony, *ſimul & ſemel*, during the Coverture.

And thirdly, he muſt be ſeized of ſuch an Eſtate in the Coverture, that the child that he ſhall beget of the ſaid Wife, may by poſſibility inherit the ſaid lands.

Of what age ought ſuch a wife to be at the death of her husband?

Of the age of nine years.

May

May the Husband by his Act any way bar the wife of her Dower?

Yes, in committing of Treason, but not of Felony, by the Statute in the first of *E.* 6. by laches, entry, sute, and pleading.

May Tenants in Dower forfeit their estates?

Yes, divers wayes, as other Tenants for life may, and also by elopment from her husband in his life without reconciliation.

May the wife of him that holdeth lands of the King in Capite bee endowed by the heir or any other common person?

No, she ought to come into the *Chancery*, and there make an oath, that she will not marry without the Kings license: whereupon a Writ shall be directed to the Escheator to endow her.

May the wife have Dower and also Joynture of her husbands lands?

No, unlesse it be in especiall cases.

When may the wife be at her election?

If the Joynture be made during the Coverture, then at the decease of her Husband, she may chuse the one, or the other; but if it be made before the Cover-

Coverture, then ſhe muſt be tyed to her joynture onely.

Was it ſo at the common law?

No, but is now ſo by the Statute of 27 *H.7. vide Vernons* caſe in the fourth part of the Lord *Cookes* Reports.

Is Tenant in Dower puniſhable of waſte?

Tenant in Dower and by the courteſie were puniſhable of waſte by the common Law, and the other particular Tenant by the Statute of *Marlebridge.*

How many ages of women are there to be obſerved in law?

Eight: Firſt, ſeven years in ayde *pur fill marrier.* Next, nine years to be endowed of her Husband, if her Husband be ſeaven years of age or upwards at his death: ten years upon raviſhment: twelve to conſent to marriage: full fourteen to be free from ward, until the age of ſixteen: ſeaventeen to be an Executor; twenty and one to doe all acts.

What doe you call Tenant by the courteſie?

It is when the Husband after the death of his wife, is to have an eſtate for life in the lands of the wife, and whereof ſhe died ſeiſed of an Eſtate of Inheritance.

What

What Eſtate ought the wife to have in the ſaid Lands whereof the husband may be Tenant by the courteſie?

She ought to have ſuch an eſtate as the husband is to have by whom ſhe claimeth Dower as aforeſaid. And beſides, the wife muſt thereof have a poſſeſſion in fait, and not onely in Law, except it be of an Advowſon or of a Rent: but otherwiſe in Dower.

What elſe is requiſite to make him Tenant by the courteſie?

He muſt have a child by his Wife during the Coverture, that is born alive.

May he forfeit his Eſtate?

Yes, as tenant in Dower may.

May his wife hurt his Eſtate, or poſſibility of Eſtate?

Yes, if the wife commit felony before he is intituled to be Tenant by the Courteſie, *viz.* having no iſſue, he ſhall not be Tenant by the Courteſie: but otherwiſe after iſſue.

What other particular Eſtates are there?

There is Tenant by *Elegit*, Statute Merchant of the ſtaple.

What is Tenant by Elegit?

It

It is the Creditor or debtee that hath the moyety of all the lands of the debtor delivered unto him by way of Extent, with all the goods of the ſaid debtor, untill the debt be levyed, by the Statute of *Weſtm.* the ſecond.

What is Tenant by Statute or Recognizance?

It is ſuch a creditor which hath all the lands and tenements of the debtor delivered unto him by Extent, untill the ſaid debts be paid by the yearly value thereof.

What if the land extended grow better, and of more yearly profit?

Then the debtor may have an *Audita querela*, and thereupon ſhorten the Extent and time of payment.

What if the Cognizee purchaſe part of the ſaid land?

If the Cognizee purchaſe any part of the ſaid land after the Execution and Extent, the whole is diſcharged; But if it be before the Execution, and after the Statute acknowledged, it is a diſcharge for the other Feoffees of the ſaid land. And alſo if the Cognizor repurchaſe the ſaid land of the Cognizee, an Extent may be ſued thereof.

What if divers ſtrangers be ſeverally enfeoffed

feoffed of the ſaid land, and an extent be ſued againſt one onely?

He ſhall have an *Audita quærela* to have contribution of the reſt. But if the Conizor reſerve any part upon ſuch a Feoffement, and an extent be ſued only againſt him, he ſhall have a Contribution. *Quære* if his heir ſhall have Contribution.

What difference is there between theſe Statutes and an Obligation?

Theſe Statutes bind the land from the time of the acknowledgement, and maketh it liable, in whoſe hands ſoever it be, to pay the Debts. But the Obligation bindeth not the lands nor goods but from the time of the Judgement.

Doth a Writ of waſte lye againſt ſuch a Tenant?

No Action of waſte lyeth againſt ſuch a Tenant, but an Action of Accompt.

Beſides theſe grounds of Law, and matters before rehearſed, what is the general learning of making and diſſolving of Contracts?

Firſt, it is a general learning, that there muſt be in every Contract *quid pro quo*, viz. Some valuable conſideration between the parties, to be payed or performed

formed, either presently, or at a day to come; or else some earnest to be given presently, otherwise the Contract is void: for *ex nudo pacto non oritur actio.* And some doubt whether a consideration past, do make a contract good. Another learning is, that in an Action of Trespasse, *quod actio personalis moritur cum persona*, and the heir or executor shall not be charged therewith.

You have reasonably satisfied me in general concerning grants to men, and from men: Now shew me a little how such Contracts and grants may be discharged and avoyded by the Law by parties consent; and I will make an end.

First, it is a general ground, *Quod nihil est tam conveniens naturali æquitati quam unumquodque dissolvi eo ligamine quo ligatur.*

What do you mean by that?

As there are matters of Record, and in fait, and some matters in fait by writing, and somtime by paroll, the matter of Record generally must be defeated by the like matter, and the matter in writing by matter in writing, and not by parol, except it be in few cases.

Put me a case thereof.

If

If I enter into a Bond to pay six pound at a day, I may plead payment thereof by paroll and witnesses: but otherwise of a Bond without condition.

Also every lease or estate of Franktenement or for years, may be drowned by taking an higher estate in the same land at any time after. Also these lesser estates may be surrendred into greater estates, and the lesser so drowned.

Put me a Case thereof.

A lease is made to one for life, the Remainder to another for life, the Remainder to the third in tayl: if he that hath the first estate for life surrender to him in tayl, or in fee, the surrender is voyd, because of the mean Estate for life.

How by Releases?

There it behoveth that he that Releaseth hath an Estate in *Esse* at the time of the Release made; and that he to whom the Release is made, hath a Franktenement in the land, or in fait.

Somewhat let me understand the nature of Tythes, and what you call them?

It is commonly the tenth part of the yearly profits which the lay-man payes to the spiritual man out of his Lands, Tenements, and Hereditaments.

How

How many manner of Tythes are there?

Three, *viz*, temporal, predial, and mixt.

When began these Tythes?

Abraham gave the first Tythes to *Melchisedeck?*

Did Abraham *then give the tenth of his increase?*

Many doubt whether it was more or lesse.

May the spiritual man take all those tythes without delivery?

No, although they be severed, the ninth from the tenth, but must be set out by the lay-man: for *Melchisedeck* did not take his Tythes, but *Abraham* gave his Tythes.

What remedy had the spiritual man if the lay-man would not give his tythes?

He had no remedy before the Statute in 2 E. 6. but to sue for the same in the spiritual Court: for by that Statute treble damages are given to the spiritual man, upon wrongfull deteying or taking away the said Tythes.

Who may prescribe to have tythes, or not to pay Tythes?

No lay-man except the King, or

the Patron ought to have Tythes in their own right, or preſcribe to pay Tythe. *Vide Cooke le ſecond part del Report Ca: Leveſque de Wincheſter.*

Are Tythes alwayes to be payed proprio genere?

No lay-man can preſcribe in *non decimando*, but in *modo decimandi*.

Of what things are Tythes properly to be payed?

Out of ſuch things as do increaſe, and bring a yearly profit; as of Corn, Graſſe, Wood, Cattel, *Silva cedua*, Wool, Calves, and ſuch like.

What Tythes are to be paid in cutting down of great Trees?

None at all, becauſe it is a deſtruction of the ſtock: and ſo it ſeemeth of all wood above twenty years growth.

Where are theſe Tythes to be recovered?

If the right of Tythe be in queſtion, in the ſpiritual Court; but if the lay-man preſcribe *in modo Decimandi*, then upon the libel, he is to ſue a Prohibition, alleging his manner of Tything, and ſhall be tryed at the common Law by a Jury: for the ſpiritual Court will allow no ſuch plea, but in *propria genere*.

To what ſpiritual man is the Lay-man to pay his Tythes?

Moſt commonly to the Parſon or Vicar of the Pariſh.

What? was it alwayes ſo?

No, before the Council of *Lateran*, the Lay-man might have pay'd his Tythes to any Spiritual man whatſoever that would take cure of his Soul.

Are all payed this day to the Parſon or Vicar of the Pariſh?

No, ſome were given out to houſes of Religion, as to Abbies, Priories, Nunneries, Chaunteries, and ſuch like.

How hapneth it that Lay-men have, and enjoy Tythes, contrary to the Law?

That beganne upon Appropriations.

What mean you by that, Sir?

It is a Maxim in Law, that the Fee-ſimple as well of Tythes, as of all other Lands and Tenements, is ſuch in ſome perſon, as the Fee-ſimple of Tythes in the Ordinary, Patron or Incumbent; which three together may grant or charge the ſaid Tythes at their pleaſures.

What mean you by that?

I mean, that the Spirituality heretofore abounding in Livings, were content with the Patron for gain or favour to grant a great part of the Tythes to any Lay-man.

What did they usually grant?

Most commonly the Rectory or Parsonage, either in Fee-simple, or for a long term, and for a small Rent.

How was the Cure then served and discharged?

By that means a poor Vicaridge was hatched out of a great Parsonage; which Vicar in these daies dischargeth the cure, and the Lay-man holdeth the residue of the Parsonage.

May such Leases be made at this day?

No, divers Statutes have abridged their power in such case, and especially the Statute in 13 *Eliz.* So that they can make no good Lease but for three lives, or one and twenty years, according to the Statute.

Now lastly, a word or two concerning the quantity of Lands and Tenements, and their special names and terms in Law, and of all manner of Reliefs, &c. due for the same; and then I shall fully make an end.

First

First you muſt note, that two Fardels of Land make a Nook of Land, and two Nooks make half a Yard-Land, and two half Yards make a Yard of Land, and four Yard-Lands make a Hide of Land, and four, and ſome ſay eight Hides make a Knights Fee, the Relief whereof is 5 l. and ſo ratably. And every Knights Living or Revenue heretofore was, or ought to have been 20. l. *per annum.* And the yearly Revenue of every Baron was, or ought to have been four hundred Marks. And the yearly Revenue of every Count or Earl 400 l. whereas the Relief of a Baron was, and is 100 Marks, of an Earl or Count 100 l. and of every Duke 800 l. So you may note, that the Knights Revenue at the firſt being 20 l. *per annum*, the Baron at the firſt was to have thirteen Knights Fees, and a quarter of a Fee; and the Earl or Count twenty Knights Fees, and the Dukes forty Knights Fees; by which proportion the Reliefs aforeſaid were rated as before is mentioned; which is the reaſon that Noblemen ought not to be arreſted or attached by their bodies, becauſe the Law doth preſume that they have ſufficient Lands and Tenements to diſcharge any Sute.

And they have these Dignities given them by the King for two purposes, *viz. ad consulend. Regi tempore pacis, & ad defendend. Regem tempore belli*; in token whereof they are adorned with a Cap of honor on their heads, and with a Sword by their sides.

Also there is another relief due after the death of the Tenant that holdeth by Grand Serjeanty, and likewise after the death of the Tenant that holdeth in Soccage, whereof I have made mention before. And the Relief for lands in Soccage is due to the Lord immediately after the decease of the Tenant, of what age soever the heir is. But of the rest, when the heir hath not been in Ward, and is of full age, at the death of his Ancestor, such a Relief is due presently after the death of his said Ancestor, being Tenant of any such Lands, or of any such Estate, as before is mentioned. *Vale.*

Quicquid agas prudenter agas, & respice finem.

Lex plus laudatur quando ratione probatur.

A Brief Treatise CONCERNING Tenants and Estates in Lands, &c.

Hereditaments and Chattells.

THe most part of all such things which the Kings Majesty or any of his Subjects doth or may enjoy, are, according to the terms used in the Lawes of *England*, either Hereditaments or Chattells. We call such things Hereditaments, which are Hereditary, and in a natural body may descend from Ancestor to heir, and from heir to heir for ever; or which in a body politique may successively or otherwise have a perpetual continuance, as Honours, Messuages, Dignities, Privileges, Liberties, and such like. And to some purpose it maketh no matter what estate or interest

Hereditaments Natural and Political.

the party hath which enjoyeth any such thing: for although he hath therein the baseſt or meaneſt eſtate that may be, yet the name of an hereditament in a thing enjoyed in a natural ſence remaineth, becauſe it is in his kinde hereditary, and an eſtate of inheritance hath therein alwaies his being in ſome perſon, except by ſome accident in ſome ſpecial caſe it happen to be for a time ſuſpended, or for ever extinguiſhed, as ſhall afterwards appear. And therefore he that hath but a term of year in Lands, granteth his intereſt in all the hereditaments which he occupieth or enjoyeth, his intereſt in the lands is thereby granted; but yet nevertheleſſe, he that hath therein but a term for certain years, hath but a Chattell, and in regard thereof, in common ſence it loſeth the name of an hereditament of that; in the moſt uſual and proper ſence it retaineth the name of an hereditament only in ſuch perſon as hath therein an eſtate of Free-hold or inheritance. And therefore if a man ſeiſed of certain lands in Fee, and poſſeſſed alſo of other lands for tearm of years, doth demiſe all his hereditaments to another for certain years, the lands, wherein the Leaſſor had but a term, do not paſſe thereby, no more than they

Grant the intereſt of all the Hereditaments which one occupieth and enjoyeth, doth grant Chattels for years alſo.

they ſhould paſſe in the ſame caſe if the Leaſſor had demiſed all his Tenements: and yet in a natural ſence Lands retein the name of a Tenement and Hereditament, as well in a Termor, as it doth in him that hath therein a Free-hold or Inheritance.

Alſo every Hereditament is either { Local, Tranſitory, or, Mixt.

1. Local, as Meſſuages which are vulgarly called houſes or lands, be they Arable, Meadow or paſture, *&c.* *Local.*

2. Tranſitory, as Dignities, Privileges, Liberties, Rents, Services, and ſuch like. *Tranſitory.*

3. Mixt, as Honours, or Mannors, which conſiſt of Meſſuages, Lands, Services, Privileges, *&c.* *Mixt.*

Rectories or Parſonages, when they conſiſt of things Local and Tranſitory, as Land, and Tythes, and ſuch like. But a Rectory when it conſiſts onely of Tythes, (as ſome do) is a Tranſitory Hereditament: and the obſervation of this difference is very material in matter of Conveyance, as ſhall be hereafter declared. But it ſeemeth that ſuch things, whereof no eſtate of Inheritance

is,

is, or ever was in being, are not to be termed Hereditaments. Also if a man seized of Lands in Fee-Simple, granteth out of the same a yearly Rent, or common of pasture for life, or for years, this Rent or common (as to me seemeth) is not properly any Hereditament; because no estate of inheritance is, or ever was thereof in being. But if a man seised of Fee in lands, doth by sufficient conveyance in the Law demise the same to another for term of his life, and limiteth the Remainder thereof to the right heirs of a man that is living at the time of such demise, no estate of inheritance is thereof in being in any person whatsoever; for by the Law the estate of inheritance passeth out of the Lessor presently, and yet it cannot be in such heir to whom it is so limited, untill the death of his Ancestor: for untill his death he can have no heir; but the person which is likely to be his next heir, is in the mean time onely termed his heir apparent. Also if *I. S.* seised of a Rent in Fee, doth by a sufficient conveyance grant the same to another for life or for years, and after the same *I. S.* doth release or grant the Rent unto him

him that is Tenant in Fee-Simple of the land out of which it is iſſuing, and to his heirs, in which caſe the inheritance of the Rent is extinct in the Land; yet in common and proper ſenſe, during the ſaid eſtate for life in the ſame, and in a natural ſenſe, during the ſaid eſtate for years, it retaineth the name of an Hereditament: For in both theſe caſes, an eſtate of Inheritance in the thing demiſed or granted, had once his being, albeit by matter *Ex poſt facto* in the ſaid caſe of Remainder, it remaineth in ſuſpence and abeyance for a time, and in the other caſe extinguiſhed for ever. And in that which followeth, when I ſpeak generally of things Hereditary, or Hereditaments, I mean thereby Hereditaments according to the common ſence. Chattels are ſuch things as are not Hereditary, but Teſtamentary, as moveable goods, Leaſes for years, Wardſhip of Lands and body, and ſuch like: And they are called teſtamentary, as well becauſe by the courſe of the common Law, things onely of that nature, and not Hereditaments, (as ſhall be hereafter declared) might be diſpoſed by Will and Teſtament; As alſo becauſe after the death

Diverſity.

death of such Testator, The Law doth transferre the same to the Executor of his last Will and Testament, for the payment of his debts and legacies; for untill a Statute made 32 *H.* 8. Hereditaments were not disposeable by Will, if the Testator had therein any greater Estate than for years, except such uses as is aforesaid, and Hereditaments that were devisable by Will, by a special Custom, and not by the common Law. And the cause whereof an estate of Inheritance of a use was Testamentary by the Common Law, did arise of the same estimation which the Law then had thereof, being lesse than of a Chattell; for a Chattell was protected by Law against wrongs, but so was not a use at remedy by Law, being for the one ordained, and not for the other. But it is to be noted, that albeit other Hereditaments were not Testamentary by the course of the common Law; yet by especial custom in some Cities and Burroughs, the Lands and Tenements therein scituate were alwaies Testamentary, in regard of their own nature, as Chattels were; but *sub modo* by a special custome.

Of

Of Chattels, ſome are Real, and ſome are Perſonal: Chattels Real are properly ſuch as doe favour of the Realty, (*viz.*) doe conſiſt of ſuch things as are in their nature Hereditary, Wardſhips of Lands, or of other Hereditaments, Leaſes, or Intereſt for yeares, or at will, derived out of any thing whereof an Eſtate of Free hold or Inheritance hath or had a being: Chattels perſonal are goods moveable, as Goods, Plate, Money, Oxen, Kine, &c. And hereby it appeareth that ſome Chattels perſonal are without life, and ſome living: But it is to be obſerved yet, that living Creatures *feræ naturæ*, as Deer, Conies, Hares, and ſuch like, are not Goods or Chattels, except they are made tame. Alſo Charters or Deeds of any Eſtate of Inheritance or Freehold, albeit they be moveable, are not Chattels. Alſo Chattels Real, are either Local, Tranſitory, or Mixt, in ſuch caſes as is before obſerved of Hereditaments; for albeit they are termed Chattels, in regard of the feebleneſſe of their eſtates, yet the things enjoyned by force of ſuch intereſts, are for the moſt part by nature Hereditaments; and of theſe diffe-

Real, or Perſonal.

Without life or living.

Local. Tranſitory. Mixt.

differences in Chattels real, some profitable use may be made, as hereafter shall also appear. And it is to be noted, that some interests for years are derived neither from any Inheritance or Free-hold, but only from a mans person: As if a man doth by deed create an Annuity for years, without limiting it to issue out of any Land or Tenement, the same is derived onely from the person which granted it, who in his life-time, and his Executors or Administrators that represent his person after his death, shall be onely charged therewith; and therefore as well such interest in an Annuity, as also a Wardship of the body of an Infant, which consisteth of a person, may in a strained sense be termed personal. But albeit the words *Guard. de Terre*, in the division of Possessions in the beginning of Mr. *Littletons* Tenures, doe seem to imply, that Wardship of Body is not to be reckoned in the number of Chattells Real; yet it appeareth by other expresse Books, that Wardship of Body is no lesse real than the Wardship of Lands: And therefore such implication as aforesaid is no proof, that it is to be reckoned in the number of Chattels personal

sonal, otherwise than in a strained sence: for things Transitory, or Moveable, consisting of any estate, (As Wardships consisting of a term during the minority of the Ward, or a term in an annuity, villeine, *&c.*) are not properly called Chattels personal, but real. Furthermore, because some things which may be enjoyed in form aforesaid, are neither Hereditaments nor Chattels, It is therefore meet to consider, in what general those things are comprised: And as to that, it is to be observed, that not onely those things which are neither Hereditaments nor Chattels, but also all Hereditaments whatsoever in every such person that hath therein any greater estate than for yeares, are vouched under the general name of Free-hold; as in the Chapter next following it doth more at large appear.

Franktenement.

WHat is a Free-hold, and what is a Chattell, is very lively set forth in the beginning of *Littletons Tenures*, by the said figure of division of Possessions: whereby it appeareth, that all

all manner of estates of inheritance, or for life, be they estates according to the Common Law, or according to the custome, are comprised in the name of Franktenement. That is to say, every of them is aptly termed a Free-hold within Judgement of Law, is greater than any estate for yeares, though it be made for many thousand yeares, in regard of any probable presumption that estate for life may be more perdurable than such estate for yeares: but in regard a Free-hold, which is proper as well to any estate of inheritance, as to an estate for life, in accompt of Law hath alwaies been had in greater estimation than any estate for yeares; and for this onely cause a Term for yeares is subject to a forfeiture by an *Vtlary* in a personal action, for an offence wherein the offendor is *felo de se*, and such like; but no estate of Free-hold, (unlesse it be by some special custome) is subject to any forfeiture of that kinde. The difference between a Franktenement and Chattels being so discovered as is aforesaid; it seemeth fit to proceed to the consideration of Estates. An Estate is that which in Latine we call *Status*; and it may

Felo de se forfeiteth all Chattels.

aptly

aptly be thus defined, *viz.* An eſtate is a permanent abode or Continuance for a time or for ever, in a thing of ſuch nature, as either is, may, or might be hereditary, as Mannors, Mills, Lands, Tenements, Rents, Services, Commons, Dignities, Liberties, Franchiſes, Privileges, Offices, and ſuch like. But no eſtate can be proper to Chattels perſonal: And for that cauſe, a gift thereof for a momentary time is of like force, as if it were given for ever. But it may be objected, that ſo it may be ſaid of a term for yeares in Lands or other Hereditaments, (that is to ſay) if ſuch a term be given or granted for an hour, it is of like force, as if it were given or granted for ever; yet ſuch term therein is properly called an eſtate. To which Objection I anſwer, that although the Law be ſo in a grant of a term, which is as much to ſay, his whole intereſt in the thing, wherein he is ſo intereſſed, (*viz.*) his Land, and not his term therein for one hour; the Grantee ſhall enjoy it no longer than for the time ſo limitted, but otherwiſe it is of ſuch gift or grant of Chattels perſonal: but herein a difference is to be obſerved,

The deſinition of an eſtate.

Difference.

ſerved, between ſuch a gift or grant of goods moveable, and a demiſe thereof; for although a grantee for yeares of things properly deviſable doth enure as a demiſe or leaſe thereof, yet ſuch grant hath not the like operation in a thing deviſable; onely in an unproper or borrowed ſence.

And therefore albeit a grant of goods moveable for a time, doth alter the property for ever; yet a demiſe thereof for a time ſhall onely enure as a diſpoſition of the profits thereby ariſing, during that time. As for example: If a flock of ſheep or kine be letten for certain yeares, the Leaſſee hath not thereby the general property thereof, but onely a ſpecial intereſt or property therein, by force whereof he may take the profit thereof during the term; but ſuch intereſt therein is not properly an eſtate. And albeit it be vulgarly called a leaſe of ſuch kine or ſheep, yet it is not ſo to be termed, otherwiſe than in a borrowed ſence; For if a man ſo interreſted therein is likewiſe poſſeſſed of other Leaſes of Lands, and granteth all his Leaſes to another, his intereſt in theſe Chattels perſonal, or the profits thereof, will not paſſe thereby.

thereby. Of Eſtates, ſome are General, and ſome Particular, as hereafter appeareth. 1. *General.* 2. *Particular.*

General Eſtates.

A General Eſtate is that which we term an Eſtate in Fee-Simple, which is the greateſt and largeſt Eſtate that may be; and it is divided by *Littleton* in his firſt Chapter of his firſt Book, according to the Etymology of the words Fee-Simple, which in Latine are called *Feodum ſimplex, quia feodum idem eſt quod Hæreditas, & ſimplex idem eſt quod legitimum vel purum, & ſic Feodum ſimplex idem eſt quod Hæreditas legitima vel Hæreditas pura*; and it received the name of a general Eſtate, not onely becauſe it was the moſt common and uſual of all other eſtates; but alſo for that in regard of the amplenelle thereof, it is exempted from the number of all particular Eſtates.

But yet it is further to be obſerved, that there be three kinds of Fee-Simple; The firſt a Fee-Simple without any other addition. The ſecond a Fee-Sim-

ple determinable. The third a baſe Fee-Simple.

The firſt of theſe is more general and common than any of the Reſidue, and it can never periſh ſo long as the ſubſtance, whereof the Eſtate ariſeth, hath any being. And therefore, albeit that he, which is ſeiſed of ſuch Eſtate, happen to dye without heire, yet the ſame Eſtate is not extinguiſhed but by Act in Law, in ſome other degree transferred to the Lord, of whom the ſaid Lands were holden, by way of Eſcheat; becauſe the Lord wherein the Tenant hath ſuch Eſtate, doth ſtill continue: but if a man ſeiſed in Fee of a rent-charge, or rent-ſeck, dieth without heire, this Fee-Simple, although it be of the firſt ſort, doth periſh, becauſe the rent, wherein he hath Eſtate, being tranſitory, is by ſuch dying without heire, quite ſwallowed up, and drowned in the Land out of which it did iſſue. And albeit a Fee-Simple of this kind is ſomtimes abſolute, ſometimes conditional, yet the condition thereunto annexed, doth not alter the ſame in nature or kind, but onely in the accidental quality.

Abſolute. Conditional.

Secondly,

Secondly, a Fee-Simple determinable, is ſuch as may be determined by a ſpecial limitation before the efluxion of the time compriſed in the general and proper limitation.

Thirdly, a baſe Fee-Simple is when two Fee-Simples in one thing are in being at one time, the one being in nature more worthy then the other. In which caſe that that is the leaſt worthy, is called a baſe Fee-Simple, becauſe it is baſe in reſpect of the other.

There is a general rule in the Law, that none can have an eſtate lively, but the Donee; which is the party to whom it is given, or the heires of his body. And it is further to be obſerved, that every eſtate of inheritance is either Fee-Simple, or Fee-Taile: of the one hath been ſufficiently ſpoken for this time; For the other, ſome further touch ſhall be given in the Chapter next following.

Every Eſtate of inheritance is either Fee-Simple or Fee-Tayl.

Particular Eſtates.

A Particular Eſtate is ſuch as is derived from a general Eſtate by ſe-

paration of one from the other; As if a man seised in Fee-Simple of Lands or Tenements, doth thereof Create by gift or grant an Estate Tayl, or by demise a lease for life, or any estate for yeares, these are in the Donee or Lessee particular estates in possession, derived and separated from the Fee-Simple in the Donor or Lessor, in reversion. Also if Lands be demised to *A.* and the estate Tayle limitted to *B.* these are particular Estates derived *ut supra*, and separated in interest from the Fee-Simple in remainder given to *C.* albeit the same remainder doth depend upon those particular Estates. And of particular Estates, some are Created by agreement between the parties, as the particular Estates before specified; and some by the Act of Law, as the State of Tenant entayled, apres possibility, d' issue extinct, Estates by the Courtesie of England, Dower and Wardship. For albeit an Estate in Dower be not compleat, until it be assigned, which oftentimes is done by assent and agreement between parties; yet because the party that so assigneth the same, is compellable so to do by course of Law, that Estate is also said to be onely created by Law.

Also

Alſo an Eſtate at will is a kind of particular Eſtate, but yet not ſuch as maketh any diviſion of the Eſtate of the Leaſor; for notwithſtanding ſuch Eſtate, the Leaſor is ſeiſed of the Lands in his demeaſne, as of Fee in poſſeſſion, and not in reverſion: Alſo an Eſtate at Will is not ſuch a particular Eſtate, whereupon remainder may depend. But of all the Eſtates before mentioned, many fruitful rules and obſervations are both generally and particularly ſo lively ſet forth by the ſaid Mr. *Littleton* in the 1, 2, 4, 5, 6, 7 and 8th Chapters of his firſt Book, which is extant as well in Engliſh, as in French; whereunto I refer you.

Poſſeſſion.

IT is further to be obſerved, that all Eſtates that have their being, are in poſſeſſion, reverſion, remainder, or in right; but of all theſe, poſſeſſion is the principal, for that it is the full fruition of all the fruit of the Eſtate. There are two degrees of poſſeſſion: The firſt and Chiefeſt, poſſeſſion in *fait*; the other, poſſeſſion in Law. Poſſeſſion in *fait* or deed is ſuch as is before ſpoken of, and that is

Two degrees of poſſeſſion:
1. *Poſſeſſion in fait.*
2. *Poſſeſſion en ley.*

moſt proper to an Eſtate which is preſent and immediate; but ſuch poſſeſſion of immediate eſtate, if it be no greater than a term, doth operate and endure to make the like poſſeſſion of the Freehold, or Reverſion. When a man is ſaid to have a term, it is to be intended a term of yeares; when it is ſaid, a man to have the Fee of Lands, it is alſo to be intended a Fee-Simple: poſſeſſion in Law, is that poſſeſſion which the Law it ſelf caſteth upon a man before any entry or perancy of profits. As if there be a Father and Sonne, and the Father dyeth ſeiſed of Lands in Fee, and the ſame do deſcend to his Sonne as his next heir; in this caſe, before any entry, the Sonne hath a poſſeſſion in Law. So it is alſo for a Reverſion expectant, or a Remainder dependant upon a particular eſtate for Life; In which caſe, if Tenant for Life die, he in Reverſion or Remainder before his entry, hath onely poſſeſſion in Law. All manner of poſſeſſions, that are not poſſeſſions *en fait*, are onely poſſeſſions in Law; and it is to be obſerved, That if a man have a greater eſtate in Lands than for years, the proper phraſe of ſpeech is, that he

he is thereof ſeiſed; but if for yeares onely, then he is thereof poſſeſſed: but yet nevertheleſſe, the ſubſtantive poſſeſſion is proper, as well to the one as the other.

Reverſion.

A Reverſion is properly an Eſtate which the Law reſerveth to the Donor, Grantor, Leaſſor, or ſuch like, when he doth diſpoſe a Leaſe, or other eſtate in Law, than that whereof he was ſeiſed at the time of ſuch diſpoſition. As if a man ſeiſed of Lands in Fee, doth give the ſame to another, and the heires of his body, or if he do demiſe the ſame for Life or yeares; in this caſe the Law reverteth the Reverſion thereof in Fee to the Donor, or Leaſſor, or his heirs, becauſe he departed not with his whole eſtate, but onely with a particular eſtate, which is leſſe than his Eſtate in Fee: And ſuch Reverſion is ſaid to be expectant upon the particular Eſtate alſo, if he that is but a Tenant for Life of Land by deed or parol, giveth the ſame to *I. S.* in Tayle, or for term of his Life, which is a greater eſtate than he may law-

lawfully diſpoſe; in this caſe the Law reſerveth a reverſion in Fee in ſuch Donor, though he were formerly but Tenant for Life. And the reaſon thereof is, for that by ſuch unlawful diſpoſition, which by deed or word cannot be without livery or ſeiſin, he doth by wrong pluck out the rightful eſtate in Fee, that was thereof formerly ſeiſed in Reverſion or Remainder, and by force thereof, by a priority of time gained in an inſtant, he was ſeiſed of a Fee-Simple at the time of the execution thereof. But if a man ſeiſed of lands in Fee-Simple, giveth the ſame unto *A.* and his heirs until *B.* do dye, without heir of his body; in this caſe the Law reſerveth no Reverſion in the Donor, becauſe the ſtate ſo diſpoſed to *A.* is a Fee-Simple, which though it be a Fee-Simple determinable, is in nature ſo great, as the State which the Donor had at the time of ſuch gift, and conſequently he departed thereby with all his eſtate. And thereby an apparent difference is between a gift made to *A.* and the heirs of his own body, and a gift made to him and his heires until *B.* dye without heire of his body; for in the one caſe the Donee hath but

an

eſtate taile, in the other a Fee-Simple determinable; *A.* hath a poſſeſſion of reverſion; for if *B.* dye without heire of his body, then whether *A.* be living or dead, the Land ſhall revert to the Donor. But ſuch poſſibility of Reverſion is much differing from the nature and property of a Reverſion; for he that hath but ſuch a poſſibility, hath no eſtate, nor hath he power to give his poſſibility; but in the other caſe, the Donor hath eſtate in Fee, and therefore he hath power to diſpoſe thereof at his pleaſure.

Remainder.

A Remainder is a Remnant of an Eſtate diſpoſed to another at the time of creation of ſuch particular Eſtate whereupon it doth depend. As if *I. S.* ſeiſed of Lands in Fee, demiſeth the ſame to *B.* for Life, the Remainder to *C.* and the heires of his body, the Remainder to *D.* and his heires; In this caſe *B.* hath a particular Eſtate for Life, and the Remnant of the Eſtate of the Leſſor is then alſo diſpoſed to *C.* and

D. ut supra, whereby *B.* hath an estate for life, *C.* a remainder in Tayle, and *D.* a remainder in Fee, depending in order upon the particular estate in possession; and in every remainder five things are requisite.

Five things Required in a Remainder.

1. That it depend on some particular estate.

2. That it passe out of the Donor, Grantor, or Lessor, at the time of Creation of the particular estate, whereupon it must depend.

3. That it vest during the particular estate, or at the instant time of the determination thereof.

4. That when the particular Estate is created, there be a remnant of an estate left in the Donor, to be given by way of remainder.

5. That the person or body, to whom the Remainder is limitted, be either capable at the time of the limitation thereof, or else *Potentia propinqua* to be thereof capable during the particular estate. If Lands be given to *I. S.* and his heires, the Remainder for default of such heir, to *I. D.* and his heires, this Remainder is voyd, because it doth not depend upon any particular estate. But

If Lands be given to *I. D.* and his heires during the Life of *I. N.* the Remainder to *I. B.* this Remainder is good, for it is not limitted to depend upon a Fee-Simple, but upon a particular Eſtate, which is only called an eſtate for Life of *I. B.* deſcendable. If Lands be given to *B.* for twelve yeares, if *C.* do ſo long live, the remainder after the death of *C.* to *D.* in Fee, the Remainder is voyd: for in that caſe it cannot paſſe out of the *Leor. al temps dl Creation dl perticuler eſtate pr.* But if a Leaſe be made to *B.* for Life, the Remainder to the heires of *C.* who is then living, this Remainder is good upon a contingency, that if *C.* dye in the life of *B.* For this Remainder may well paſſe out of the Leaſſor, preſently in abayance, without any inconvenience, becauſe only the inheritance is ſeparated from the Free-hold as in abayance.

Reaſon.

No remainder can depend upon a Fee-Simple, But upon a particular Eſtate deſcendable.

Nota.

Reaſon.

If lands be given for life with a remainder to the right heires of *I. S.* and the Tenant for Life dieth in the life of *I. S.* this Remainder is void, becauſe it did not veſt or ſettle either during the particular Eſtate, or at the time of the determination thereof; for until *I. S.* dye, no perſon is thereof capable

by

by the name of his heires ; but if Land be given to *I. S.* for term of his life the remainder to his right heir in the singular number, and the heires of his body ; and after *I. S.* hath issue a Son and dyeth, this is a good Remainder, and the Sonne hath thereby an estate tayle for although it were unpossible that such Remainder should vest during the particular Estate, because during his life none could be his heir ; yet it might vest at the instant of his death, which was at the time of his determination of the particular estate. Concerning a fourth thing, if a man seised of lands in Fee, granteth out of the same Rent or common of pasture, or such like thing, (which before the Grant had no being) to *I. S.* for term of his Life, the remainder to *I. D.* in Fee, this remainder is voyd ; because of this thing granted there was no remainder in the grantor to dispose. And whereas some heretofore have been of opinion, that albeit the same can take no effect as a remainder, yet it shall take effect as another grant of a new Rent or common, *ut res magis valeat quam pereat.*

There is a Rule of Law, that all things enjoyed

enjoyed in a ſuperior degree, ſhould not paſſe under the name of a thing in an inferiour degree: and therefore if Lands be given to two perſons, and unto the heirs of one of them, or unto the husband and wife, and the heirs of the husband, and he that hath the eſtate of inheritance granteth the reverſion of the ſame land to another in Fee, ſuch grant is voyd, becauſe the grantor thereof was ſeiſed in a ſuperiour degree, *viz.* in poſſeſſion, and not in reverſion, as appeareth 12° *Edw.* 4. 12 *&* 13 *Edw.* 3. *Brook, Title of Grants.* And concerning the fifth and laſt thing; if a Leaſe be made of Land for terth of Life, the Remainder to the Mayor and Commonalty of *D.* whereas there is no ſuch Corporation then in being, this Remainder is meerly voyd, albeit the King's Majeſty by his Letters Patents do create ſuch Corporation during the particular eſtate, at the time of ſuch grant the Remainder was voyd, becauſe then there was no ſuch body Corporate thereof capable, or in *potentia propinqua* to be created, or made capable thereof during the particular Eſtate; but the poſſibility thereof was then foran, and

A Maxim.

Reaſon.

and not probably intended. The like law is, if a Remainder be limitted to *John* the Sonne of *T. H.* who had then no Sonne, and afterwards during the particular estate, a Sonne is born who is named *John*, yet this Remainder is voyd; for at the time of such grant, it was not probably to be intended that *T. H.* should have any Sonne of that name. Also before the dissolution of Abbies, if a lease of Lands were made to *I. S.* for Life, the Remainder to one that then was a Monk, such Remainder was voyd, for the cause before alledged, albeit he were deraigned during the particular Estate: but if such Remainder had been limited to the first begotten Sonne of *I. S.* it had been good, and should accordingly have vested in such Sonne afterwards born during the particular Estate.

Rights.

A twofold Right.

A Right in Law is either cloathed, or naked. A Right cloathed is when it is wrapped in a Possession, Reversion, or Remainder. A naked Right, which is also most commonly called a Right,

Rights; is when the ſame is ſeparated from the poſſeſſion or remainder, by diſſeiſin, diſcontinuance, or other deveſting and ſeparating of the poſſeſſion from it. As for example, if a Leaſe of Land be made for life to *I. S.* the remainder to *I. D.* in Fee; in this caſe *I. S.* hath a Right cloathed with a poſſeſſion, and *I. D.* cloathed with a Remainder; but if a ſtranger that hath no Right or Title, doth in the ſame caſe enter into the Land by wrong, and put *I. S.* forth of poſſeſſion, ſuch entry by wrong is called a diſſeiſin; and therefore the poſſeſſion is moved from the Right; for by reaſon thereof, the diſſeiſor is ſeiſed of the Land, and *I. D.* hath alſo the like naked Right to the Remainder by ſuch diſſeiſin, is likewiſe deveſted and plucked out of him, and cannot be reveſted in him during the Right of ſuch particular eſtate, unleſſe the poſſeſſion of the particular Tenant be therewith reveſted, which muſt be by his entry or recovery by Action; and by ſuch entry of the particular Tenant, or by his recovery with execution, the Remainder ſhall be reveſted as well as the particular Eſtate. Alſo there is a Right in Goods and Chattels, as well as

in Lands, Tenements, and Hereditaments, which is also cloathed with a possession, so long as the rightful proprietor hath the same; but if another doth take them from him by wrong, he now hath onely a naked Right to the same, which cannot be by him granted, for the cause before alleged; but yet he may release his right therein to him that is thereof possessed, for the same reason it is before alleged of a release of Right in Land: and if such Right happen to be forfeited to the King, his Highness may grant the same by his Prerogative.

Common Recoveries.

A Common Recovery is such as is suffered and recovered by the assent of both parties to the same of any Mannors, Lands, Tenements, Advowsons, Rents, Services, or other Hereditaments, for such Estate thereof, and to such use or uses as are between them agreed upon; and it is most commonly suffered by the Writ of *Entry sur disseisin in le post*, the nature of which Writ is sufficiently set forth by Justice *Fitz-*

Herl. in his book of *Natura Brevium*; although ſometimes it hath been, and may be alſo uſed in other actions. And ſuch common recovery is uſual by ſingle, double, or treble voucher, as the cauſe doth require. And for the better underſtanding hereof, it is requiſite to obſerve the terms of Law uſed therein. The immediate party that recovereth, is called the Recoverer; and the party againſt whom the Recovery is had, is called the Recoveree: but in the proceeding therein, he that is to recover is called the Demandant, and the party againſt whom the immediate recovery is to be had, is called Tenant: for it is to be noted, that he muſt be Tenant of the Free-hold, or elſe the Recovery cannot be a good and ſufficient aſſurance in the Law. A Voucher is the calling into the Court of ſome other Perſon to warrant the Land; and he that firſt voucheth (*viz.*) he that calleth another to warranty, is the Tenant, and the party vouched termed the Vouchee or Tenant by the warranty. And in a Recovery with a ſingle Voucher, are included two Recoveries, *viz.* one at the ſute of the Demandant againſt the Tenant, and another at the ſute of the

Tenant against the Vouchee. And if it be with a double Voucher, there are included in it three Recoveries, one by the demandant against the Tenant, one other by the Tenant against the Vouchee, and the third by the first Vouchee against the second Vouchee. And in a Recovery with a treble Voucher, are included four Recoveries, whereof three are such as are last mentioned, and a fourth is a Recovery by the second Vouchee against the third; and in these Recoveries the Demandant hath Judgement to recover the land against the Tenant, and the Tenant hath likewise Judgement to recover in value against the Vouchee; and if it be with a double Voucher, the first Voucher hath also the like Judgement to recover in value against the second; and if it be with a Treble Voucher, the second Vouchee hath the like Judgement against the third. And the Record also maketh mention of the execution of the Judgement against the Tenant by Entry, or Writ of *Habere fac seisinam* accordingly. And when such Recovery is so executed, the uses agreed upon do forthwith arise out of the Lands, Tenements, &c. so recovered

red, according to the mutual agreement of the parties. The ſcope of a common Recovery with a ſingle Voucher, is to barre the Tenant and his heires of ſuch only eſtate Tail which then is in him, to barre others of ſuch eſtates as they have in any Reverſion expectant or Remainder dependant upon the ſame, and of all Leaſes and Incumbrances derived out of ſuch Reverſions or Remainders. *Recoveries with ſingle Voucher.*

The ſcope of a common Recovery with a double Voucher, is to barre the firſt Voucher and his heires of every ſuch eſtate as at any time was in the ſame Voucher, or any of his Anceſtors whoſe heir he is, of ſuch eſtate; and all other perſons of ſuch right to a Reverſion or Remainder, as were thereupon at any time expectant or dependant; and of all Leaſes, Charges, and Incumbrances derived out of any ſuch Reverſion or Remainder; and that will be alſo a perpetual bar of ſuch eſtate whereof the Tenant was then ſeiſed of in Reverſion or Remainder; expectant, or dependant upon the ſame, &c. *Recovery with double Vouchers.*

The ſcope of a common recovery with a treble Voucher, is to make a perpetual barre of the Eſtate of the Tenant, and of *Recovery with treble Voucher.*

every such estate of inheritance as at any time had been in the first or second Vouchee, or any of them, or either of their Ancestors, whose heires he or they are, of such estate, and as well of every Reversion thereon dependant, as also of all Leases, Estates, Charges, and incumbrances derived out of any such Reversion or Remainder.

The Law doth so protect the King's Possessions, that they cannot be devested or taken from him by any feigned Recovery Disseisin; and such protection thereof doth also support and preserve the Remote Reversion and Remainder pursuing the same, that they cannot be devested by a feigned Recovery, suffered by Tenant in tail in possession, or by his Feoffement, or by any disseisin of the Free-hold; but yet such Recovery will be sufficient of the particular estate Tail, of the Recoveree or Vouchee, and of such Reversion thereupon dependent, as are in *esse*, between his estate and Remainder in the King, unless the estate Tail of the Recoveree or Vouchee were created by Letters Patents of his Highnesse, or of some of his Progenitors, or by his, or some of their provi-

AS a common Recovery is an assurance of the greatest force to barre such Reversions and Remainders as are aforesaid in the precedent Chapter; so to another purpose, that is to say, to conclude strangers of their right, if they do not make their claim according to the form of the Statutes in that behalf made, a Fine is before all other assurances to be preferred; and it receiveth the name of a Fine, *Quia finis finem litibus imponit.* In every Fine there are two several parties, the Commissor, and the Commissee; the party levying the Fine, is called the Commissor; and he to whom it is levyed, is called the Commissee. A Fine is partly said to be levyed, when it is knowledged in the Court, or when it being knowledged elsewhere is certified into the Court, and received to be there ingrossed and recorded. There are two sorts of Fines, the one at Common Law, the other levyed and proclaimed according to the Statute. Two several Statutes are chiefly to be considered in Fine levyed, and proclaimed according to the form of a Statute; the one of them is the Statute of

1 R. 3. *chap.* 7. 4 H. 7. *chap.* 24. 32 H. 8. *chap.* 36.

1 *R.* 3. chap. 7. The other is the Statute of 4 *H.* 7. chap. 24. being in some things afterwards explained by a Statute made in *Anno* 32 *H.* 8. chap. 36. The number of these Proclamations are four, and to be made at four several terms; and a Fine levyed and Proclaimed in the King's Majesties Court, before his Justices of the Common Pleas, of any Lands or Hereditaments, is ordeined to be a final end, and to conclude, as well privies as strangers to the same, except such strangers as are women Covert persons then being within age, *viz.* the age of 21 years, in person, or out of this Realm, or not of whole mind, at the time of such Fine levyed. But this exception is conditional, *viz.* that they or their heires, inheritable to the same Lands, *&c.* do take their Action or Lawfull entry according to their Right and Title, within five years next after they be of full age of 21 years, out of Prison, uncovert, within this Realm, and of whole mind; and the same Actions sue, or their lawfull entries take and pursue according to the Law. Concerning Fines with Proclamations, five things are to be observed.

First

First, the time of Levying and Proclaiming the ſame. Secondly, the place where, and before whom it is to be levyed. Thirdly, of what things it be levyed. Fourthly, what ceremonies are therein to be obſerved. Fifthly, the ſeveral times are to be obſerved and conſidered. First, that the fine be levyed after the feaſt of Eaſter, which was in the year of our Lord God 1496. For all Fines levyed before that time, are out of the compaſſe of this Statute, 4 *H.* 7. as by the letter of the ſame Statute it appeareth. 2. That the Proclamation muſt be made in time of the term; and therefore, if any of thoſe Proclamations do happen to be made either before the beginning or after the end of any term, or on a Sunday, or other Feſtival day exempted from the term; as on the Feaſt-day of the *Purification* of St. *Mary* the Virgin, *Aſcention-day*, *All Saints*, *All Souls*, or on the feaſt-day of Saint *John Baptiſt*, if it happen on any other day than on the Friday next after *Trinity-Sunday*, and to be recorded accordingly, then if it be not holpen by the Statute 23 *Eliz.* cap. 3. all the Proclamations are reverſable, by a Writ of Error, or by Plea, as

5 *things are to be obſerved, concerning Fines with Proclamations.*

4. H. 7.

23 *Eliz.* cap. 3.

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Plow. com. 266, 267. it appeareth in *Finches* case, *Plow. Com.* 266, 267. and then the Fine will be of no other nature or force, than a Fine without Proclamations. And although in truth, the Proclamations were all made within the terms, according to the form of the Statute, yet if the Record or Records do purport the contrary, they are reversable by error, or avoydable by Plea, if it be not holpen by the said Statute; for a Record is of that credit in Law, that no Averment may be admitted to the contrary.

It is to be considered who are privies, and who are strangers to a fine: according to the Statute, there are three privities onely: 1. Privity in blood onely, 2. Privity in estate (*tantum.*) 3. Privity in Blood and Estate. There are three kinds of Privities: 1. in Blood, *tantum.* 1. One is when a man is heir to his late Ancestor, and yet hath nothing by descent from him. As for example: if a Father seised of Lands in Fee, doth thereof infeoff a stranger and his heirs, or if he by his last Will and Testament in writing, did dispose the same, being holden in Soccage to another in Fee, and hath issue, and dyeth, in

ſuch caſe, ſuch iſſue is privy in blood, having nothing by deſcent, 2. One other kinde of privity in blood is, when ſomething is deſcended unto him, as heir unto his Anceſtor, and yet he claimeth the ſame by ſome other Right, and not as heir to ſuch Anceſtor. As for example: if there be a Father and Sonne, and the Sonne purchaſeth Lands of a ſtranger in Fee, and is thereof diſſeiſed by his Father, who dieth thereof ſeiſed, and the ſame deſcend to his Sonne as heir; in this caſe, the Sonne is privy alſo in blood, but not in eſtate: for although the poſſeſſion of the ſame Land came to him by deſcent as heire to his Father, yet he was therein remitted forthwith to his former Eſtate. 3. And a third kind of privity in blood *tantum*, is where a man in ſome reſpect is privy in blood and eſtate, and in another reſpect privy in blood *tantum*. As for example: if there be two Brothers, and the Eldeſt purchaſeth Lands in Fee, and is thereof diſſeiſed by his younger Brother, afterwards diſſeiſed by a ſtranger, and that ſtranger dyeth thereof ſeiſed, the younger Brother being within age, and afterwards the Elder Brother

dyeth

dyeth without iſſue, the younger Sonne hath two manner of Rights to the Land; the one is a Right of Entry againſt ſuch heir as is in by deſcent during his minority: but that Right is onely in reſpect of his former poſſeſſion which he obtained by diſſeiſin, and not as heir to his brother; and in this reſpect he is privy in blood to his Eldeſt brother, but not privy in Eſtate. The other Right that is now in the younger brother, is onely a Right in Action, and not a Right of Entry; and this is in him as heir to his brother, whoſe entry was taken away by the ſaid deſcent, in reſpect of his Right, he is privy in blood and Eſtate to his brother. Privity in Eſtate *tantum*, is where a man claimeth an Eſtate in Land, as aſſignee to another; as if *A.* infeoff *B.* in this caſe *B.* and his heires are privy in eſtate to *A.* Privity in blood and in eſtates are of two ſorts, whereof the one may properly be called a privity of blood and eſtate, the other is ſo called unproperly, and in a borrowed ſence. That which is properly called a privity in blood and eſtate, is when both privities do accrew by deſcent, by or from one Anceſtor. The other is, when the one of them accreweth by

by one manner of title, and the other by title of another kind: As for example: If there be a father and a ſonne, and the father purchaſeth lands, and dyeth thereof ſeiſed, and the ſame doth deſcend to his Sonne, he is to his Father in a proper ſence privy in blood and eſtate; becauſe both thoſe privities doe to him accrew, by one deſcent from one Anceſtor.

It is to be noted, that ſuch privyes as the Statute meaneth, are after the ingroſſing *de le fine & proclamation* made according to the form of the Statute, abſolutely barred without hope of recovery or reſtraint, by any claim; but ſuch as are ſtrangers are barred onely conditionally, if they or their heires doe not claime according to the form of the Statute within the times therein preſcribed. It is a rule in Law, that no errour in the fault of the Judge can be aſſigned to reverſe a Judgement, unleſſe it be ſo apparent, that it may be tryed by view of the Record, or by inſpection of the perſon: for if it ſhould, many grave Judgments would bee overthrowne by corrupt tryals of falſe ſurmiſes, to the ſubverſion of Juſtice, and maintainance of

of vice. But if the Judge give judgment for the one party upon the matter appearing of Record, whereas he ought to give Judgment for the other party, this is reverſable by Errour; becauſe ſuch a fault of the Judge through ignorance of the Law is apparent by the view of the Record. Alſo a fine levyed by a feme covert is not erroneous, and therefore it is not reverſable by error, but avoidable by her. Alſo a fine levyed by a feme covert at the common Law, is avoydable by the entry of the Husband; yet ſince a fine levyed at this day, and Proclamation according to the form of the ſaid Statute of 4 *H.* 7. or 31 *Eliz.* cannot be avoyded by the entry of the Husband of the Commiſſor, as to the Eſtate of Inheritance, but onely to the Franktenement during the coverture, and ſo long afterwards as he ſhall be tenant by the courteſie, if he had iſſue by his ſaid Wife, before the fine levyed. And in that caſe albeit the Husband do enter within five years, or before proclamations had and made, the Feme and her heirs are barred as privyes to the fine, the words of the ſaid Statute of 4 *H.* 7. be, the fine to be a final end, and conclude as well

privies

privies as ſtrangers: and yet all ſtrangers ſhall not be barred by ſuch fine; the King is no ſuch ſtranger as is comprized in the ſaid Act: for if the Law-makers had meant to conclude the King thereby of his Right, then it is not to be doubted (his Greatneſs being ſuch as it could not be forgotten) but they would have made ſome proviſion for his claim; which thing they have not done, becauſe they never intended to conclude him; but others, being bodies corporate of things that go by way of ſucceſſion, are comprized in this Word (ſtrangers) in the body of the Act. And yet they are not conteyned in the letter of exception, or of any of the ſavings which do ſave rights to men and their heirs, ſpeaking nothing of Corporations or ſucceſſions, or of any thing in ſucceſſion.

Livery twofold: 1 en fait, 2 in Law.

There be two kinds of Liveries; the one called a livery *en fait*, which is a ceremony uſed in the Execution of a Feoffment in Fee, or a Leaſe for life, by delivery of the Ring of the door of the houſe, or a clod of the land contained in the Feoffment, in the name of the houſe and other hereditaments therein comprized.

compriſed. The other is called a Livery in Law, or a livery within the view, with the like ceremony in other form uſed in the execution of ſuch Feoffment or Leaſe *par vie*; but that is not alway made upon the land, but onely in the view thereof, that is to ſay, in a place where the parties do ſee and behold the land; and the Feoffer ſo beholding the ſame, ſaith to the Feoffee, I make a livery to you of this land, according to the purport of the Deed (if it be a Feoffement by Deed) if it be without Deed, then the words are to this effect (*viz.*) I do deliver to you ſeiſin of this land; or, if I do make livery and ſeiſin of this Land to you and your heires; or if it bee for term of life, to you for term of your life. This benig done, the Feoffee or Leaſſee muſt enter; and before ſuch entry, the livery within the view is not compleat; for if the Feoffer happen to dye before an entry made by the Feoffee, ſuch livery within the view is voyd, and cannot be good by any entry afterwards made.

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Conveyances and Aſſurances by Deed poll, or by Paroll.

A Conveyance or Aſſurance by Deed poll, is when it is made by a ſingle Deed which is not indented: and albeit many Conveyances may be by Indenture, which could not be good by Law, if they were made by Deed poll, or by Parol; yet *è converſo* all Conveyances and Aſſurances that may be ſufficient by Deed poll, or by Parol, may alſo without all queſtion be good by Indenture. Alſo, what thing ſoever may be conveyed by parol, may be alſo conveyed by Deed poll; but *è converſo*, many things may be conveyed by Deed poll, which may ont be conveyed by parol. Therefore it ſeemeth fit now to conſider what things in reſpect of their nature and kind may be conveyed by Deed poll, and not by paroll; And as touching Hereditaments tranſitory, or things tranſitory, which do paſſe properly, or ariſe by grant, not by Livery, Reverſions, and Remain-

ders expectant, or dependant upon a particular Estate in any Hereditaments whatsoever, may be apt Conveyance, passe, or be created by Deed poll, but not by paroll; and hereupon ariseth the General Rule, that those things which doe lye in grant, and not in Livery, cannot passe by parol, but by Deed. But such things as doe lye in Livery, may passe without Deeds; Feoffments of Messuages, Lands, Houses, Mannors, or Rectories, and such like, are Good without Deed; and so are Leases for years thereof made; because the Freehold thereof will passe by Livery; otherwise it is of grants of Seignories in grosse Rents, Services, Commons, Advowsons, Waifs, Liberties, Franchises, and such like, being transitory, or of such Remainders or Reversions as are aforesaid. It is to be noted, that Lands, Tenements, or Hereditaments, or any estate therein, or any Estate in a thing issuing thereof, cannot be conveyed to the King without matter of Record, as by Fine or Recovery, Record, as by Deed inrolled; and therefore a Grant, or any other Conveyance of such thing by Deed, is not sufficient, unlesse the same

ſame deed be inrolled. And if a Leaſe of Land be made for life to *I. S.* the remainder to *I. S.* in Fee-tayl, the remainder to the King in Fee, this Remainder to his Majeſty cannot be good, unleſſe the ſame be by Deed inrolled: But a Deed poll thereof inrolled, will be no leſſe ſufficient to this purpoſe than an Indenture inrolled. And to the inrolment thereof, the King is tyed to no time certain, ſo that an enrolment thereof at any time during his Majeſties life will be good in Law; but if it be not inrolled in his life-time, then nothing can thereby be in the King: And if the King grant the ſame to another before Inrolment, the grant is void, and cannot be made good by the enrolment thereof afterwards.

There are two ſorts of conveyances by Deed. The one doth enure by tranſmutation of poſſeſſion, transferring of a naked right. Conveyances by deed that do enure by way of tranſmutation of poſſeſſion, are of divers ſorts; whereof ſome do enure by way of removing of a poſſeſſion, and creating of an Eſtate, ſome by creating both of an Eſtate and poſſeſſion; ſome by extingiſhment, ſome by ſuſpenſion hereof; and ſome by remotion of the poſſeſſion, and drowning

of the Estate. Conveyances by transmutation of a possession that do enure by removing both of the Estate and Possession, are such whereby an Estate and possession formerly setled in the one party, are removed to the other party. Conveyances that do enure by removing of a possession, and creating of an Estate, are such whereby a possession formerly setled in one party, is removed to another, by Creation of a New Estate other than such as was in the party from whom it was derived. A Conveyance that doth enure by Creation of an Estate and possession, is when the thing conveyed had no being before the making of such conveyance. A conveyance by transferring of a possession, is said to enure by way of extinguishment, when the thing and the Estate conveyed are thereby extinguished. A conveyance doth enure by remotion of the possession, and a drowning of the Estate, When a surrender is made of a particular Estate for life, or for years, to him that hath the Reversion or Remainder thereof; in which case the possession of the Land is removed, but the Estate is drowned; for he to whom the surrender is made

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is not ſeiſed of the particular Eſtate, but of ſuch Eſtate wherein the ſame is drowned; and ſuch ſurrender of an Eſtate which might have been created without deed, or matter of Record, may be ſurrendred by parol.

Note, that a ſurrender to any perſon of a particular Eſtate which could not be created without Deed, matter of Record, cannot be good by parol.

Conveyances by Will.

A Conveyance by Will is commonly called a deviſe: the party that giveth or bequeathes a thing by Will, is commonly called the deviſor; and he to whom it is bequeathed the deviſee. Of deviſes general there be three ſorts, 1. a deviſe by the Common Law, 2. a deviſe by Cuſtome, 3. by force of the Statutes of 32 and 34 *H.* 8. By the Common Law no manner of Hereditaments, wherein the Teſtator had any greater Eſtate than for years (except an Eſtate in a Uſe of Lands or Tenements) was deviſable by Will; but he that had ſuch uſe in Fee, or for another mans life, might before the Statute 27 *H.* 8. *de uſibus in poſſeſſio-*

nem transferendis, have deviſed the ſame by Will, as he might doe of a terme in uſe. For the better diſcerning what deviſe is good by the Common Law, and what not, ſix things are meet to be obſerved: 1. That the deviſor be a perſon able to deviſe: 2. That the deviſee be capable of the thing deviſed: 3. That the things are deviſable by Law: 4. That the purport thereof being no other in effect, than ſuch as might ſtand good in Law, in a conveyance by Act executed in the life of the deviſor: 5. That the deviſe be not impoſſible: 6. That it be certain.

Concerning the firſt of theſe, foraſmuch as every Will doth take effect by the Death of the Teſtator, therefore without the Death of ſuch Teſtator, there can be no Will, and without a Will there can be no deviſe; and conſequently all kind of Corporations are unable to deviſe any thing by Will, becauſe they never dye. A Maior and Commonalty, Provoſt and fellows of a Colledge, Wardens and Commonalty of a Company cannot deviſe any thing by Will; no more can a Biſhop, Dean, Parſon, or Vicar deviſe any thing deviſable, which they

have not in their politique capacity, (*viz.*) which he hath in Right of his Bishoprick, Deanry, Parsonage, or Vicarage; but every of them may devise such things devisable as they have in their Naturall capacity; for in respect thereof every of them must dye. But there are some naturall persons which have no power nor ability in Law to devise any thing by Will; as persons not of whole minde, and Ideots: But an infant of fourteen years of age may make a Will, and thereby make an executor of his Goods. The Husband may devise Goods or Chattels to the Wife, albeit they are one person in Law: A Woman covert hath no power to give any Goods by Will; for without the consent of her Husband she cannot by Law make a Will, either of any of her Husbands Goods, or of such Chattels in possession, or in right of Action, as are in her Husband in his right, or her self in her right: 12 *H.* 7. *Fol.* 24. A man outlawed in a personal Action, or a person attainted of felony or Treason, cannot devise any Chattels personal or Real; for if it were devisable or grantable, the property thereof is in the King, as aforesaid,

ſaid by ſuch Outlary or Attainder.

Concerning the ſecond thing to be obſerved, not onely perſons of full age, women ſole, and perſons of diſcretion and whole mind, but alſo Infants, feme Coverts, Ideots, and Mad-men are capable of a Deviſe, becauſe it tendeth to their benefit, and not to their prejudice; but yet ſuch capacity of a Woman covert is ſubject to a condition in Law (*viz.*) if her Husband doe not diſagree to the ſame; for if at any time during the coverture he doth diſagree thereunto, the deviſe is void in Law, unleſs before ſuch diſagreement he did formerly agree to the ſame: but if he do once agree to it, his diſagreement afterwards is of no Effect. Alſo perſons outlawed in a perſonall action, or convict or attainted of Felony or Treaſon, are capable of a deviſe: but in ſuch caſe, if the deviſe be of a chattell, the King ſhall have the thing deviſed, as a chattell forfeited by the outlawry, conviction, or attainder; and if the deviſe be of an Eſtate in Free-hold, or Inheritance in Lands or Tenements, then in ſome caſe the King, and in ſome caſe the Lord of whom the ſame is holden, as the caſe may require, ſhall be intituled

nituled thereunto: Alſo a deviſe made to Child in his Mothers womb is good in law.

Of the third Obſervation, for the better diſcovering what thing is deviſable by the Common Law, and what not, a difference is to be obſerved, betwixt an Eſtate to the uſe of another created by Law; and an Eſtate made or conveyed to the uſe of another by agreement of parties; for where it is created by Law to the uſe of another, there it is not deviſable by Will; but if it be made or conveyed by agreement it is otherwiſe; as for example: if a man ſeiſed in Fee of Lands holden in Soccage, hath iſſue a Sonne, and dyeth, the Sonne being under fourteen years of age; in this caſe the Law appointeth the care and cuſtody of ſuch iſſue and of the ſame Lands, which came to him by deſcent from his Father, unto his Mother (if ſhe be living) as Guardian in Soccage, untill he be of the age of diſcretion, *viz.* 14 yeares: but this wardſhip in Soccage, ſo to her accrewing by Law, is to the only uſe and profit of the Infant, and therefore it cannot be deviſable by Will, neither ſhall it go to the Executor or Adminiſtrator of the Mother

Mother after her Death, but to the next Ancestor of the Infant of the Mothers side, as it appeareth, *Plowden* fol. 239. and 294. in the case between *Osborne* and *Jore*.

Concerning the Fourth, if *cestui que use* in Fee of Land before the said Statute of 27 *H.* 8. had devised the same to *I. S.* and his Heires, and for default of such Heirs to remain to *I. D.* or if he had devised the same to *I. S.* and his heirs, until *I. N.* doe happen to dye without issue of his body, the remainder to *I. D.* and his heirs, this devise of such Remainder had been voyd; because by the Rules of Law, a Remainder could not be limitted to depend upon an estate in Fee-Simple, so that such a Remainder could not have been created by Conveyance executed in a mans life.

Concerning the fifth Observation; if a man be possessed of a term determinable by his Death, doth devise the same by Will to another, the devise is voyd, because it is unpossible that it should take any effect. Also a devise to *I.* the Sonne of *T. S.* of *D.* whereas the same of *T. S.* hath onely issue *W.* is voyd, because there is no person *in rerum Natura*.

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it is alſo, if a term be deviſed to the Executor of *I. D.* whereas *I. D.* dyed Inſtate.

Concerning the ſixth Obſervation, if any having iſſue many Children, doth by Will give or bequeath a Cup of Silver, a Horſe, or any other thing deviſable, to one of his Sonnes, this deviſe is void, becauſe it is uncertain which of his Sonnes ſhould have it; ſo it is alſo, if the like deviſe be made disjunctively to *I. S.* or *I. D.* but a deviſe to one of his Sonnes, at the choice of his Executors, is good, becauſe the uncertainty may be reduced to a certainty by the Election of the Executors. So alſo if a man be poſſeſſed of a term in Lands for ſixty yeares, and by his Will deviſe to *I. D.* ſuch and ſo many yeares of the ſaid term, as ſhall be nominated or appointed by his Executors; this deviſe is good, *cauſa qua ſupra*: and yet a grant or gift thereof in that form made by conveyance, executed in his life, could not be good; the reaſon thereof is, becauſe he can have no Executors is his life-time, by reaſon whereof it is impoſſible to reduce ſuch Gift or Grant unto a certainty before his Death; and a conveyance executed

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in a mans life must be reduced to a certainty before his Death, or else it can be of no effect in Law. But that reason ceased in a devise (which taketh no effect untill his Death) and therefore the Law is therein differing accordingly. Also it is to be observed, that a devise of Chattels may be good, either by Will nuncupative, or by writing.

Concerning a Use, it is to be observed, that a man seised of Lands or Tenements in Fee, to the use of him and his Heires, could not by the Common Law devise the use thereof by Will, unlesse the same Lands or Tenements were devisable by custome. But if *I. S.* seised of certain Lands in Fee, had infeoffed certain persons thereof to the use of himself and his heirs, this use so severed from the possession, was devisable by the Common Law, albeit the Lands out of which it riseth were not devisable.

Conveyances by Will of Lands devisable by Custome.

IT is to be noted, that albeit by the Rule of the Common Law no Hereditaments

ditaments (other than a Uſe) was deviſable by Will; yet by particular Cuſtomes in divers Cities and Burroughs, Lands and Tenements therein ſcituate have alwaies been deviſable by Teſtament; ſo that the cuſtome doth therein alter the courſe of the Common Law. But in every ſuch deviſe ſix things are eſpecially to be obſerved.

1. That the thing deviſed be comprized within the Cuſtome.

2. That the deviſe be purſuant to the Cuſtome.

3. That the power of the Deviſor be not reſtrained by Statute.

4. That the Cuſtome be lawful and reaſonable.

5. That the intent of the Deviſor bee certain, lawful, and not unpoſſible.

6. That the Will be not countermanded.

Concerning the firſt of theſe, the obſervation is double:

1. That the thing deviſed be as well in nature and kinde, as alſo in continuance, ſuch as is warranted by the Cuſtome.

2. That it be contained within the bounds

bounds and limits thereof. As to the first part, if by custome all the tenements within a certain City or Borough be devisable by Will; A Rent-charge, and Rent-seck which had continuannce time ont of mind, are in nature, kind, and continuance, such as be comprised within the custome, and therefore are by force of such custome devisable. As to the second part of the observation; if a man seised of Rent in Fee, which time out of memory hath had a continuance, the same Rent is issuing as well out of lands within the limits of such custome, as aforesaid, as also out of Lands not contained within the precincts; this Rent is not devisable by the said Custome, because the same or any part thereof is not contained within the precincts thereof, which must be taken strictly.

The second Observation hath three branches, one concerning the person devising, another touching the persons to whom the devise is made; And the third granteth the devise it self.

1. As to the first branch, a devise made by a Forraigner, to any person, of Lands or Tenements scituate within the City of *London*,

ndon, ---------- the Cuſtome of *ndon*, as appeareth *M.* 8 & 9 *Eliz.* l. 255. But yet ſome perſons compri-d within the general cuſtome, are by e Rule of the Common Law exempt om the ſame; as a deviſe made by a erſon lunatique, an Ideot, an Infant, nd a man ſeiſed onely in the right of his Wife, is voyd, this cuſtome notwithſtan-ing.

As to the ſecond branch; Citizens nd Freemen of *London*, may by the cu-ome of the ſaid City, without the ings Licenſe, lawfully deviſe Lands in *ndon*, whereof they are ſeiſed in Fee, Guilds or Corporations, as appeareth 5 *H.* 7. 10, 19. But if he be onely a reeman and no Citizen, or onely Citizen nd no Freeman, he cannot without the ings ſpecial licenſe lawfully deviſe in *Mortmaine*.

As to the third branch; if the Cu-ome be, that Lands and Tenements ithin a certain City be deviſable, in ee-Tail, for ſuch eſtate, *Weſt.* 2. was a ee-Simple; alſo it ſeemeth probable, that y force of a cuſtome that maketh Lands nd Tenements deviſable, a man may de-iſe thoſe things that are therein grow-

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ing, as trees, grasse, and such like. But a devise of a rent, or Common out of lands devisable, is not pursuant to the Custome, because they had no being at the time of the devise, and though they had any beginning, yet they were created within the time of memory, they are not devisable for the cause aforesaid. If a house be onely erected upon devisable lands by custome, a devise thereof is pursuant to the Custome, albeit in the place there was never any house before, because the house doth retein the nature of the land whereupon it was built, as a principal part whereof it doth consist, the change of the name notwithstanding.

Concerning the third observation, it is to be noted, that albeit the custome hath been to devise Lands to any person or body politique, yet the same may not by force of such custome be devised at this day in *mortmaine*, upon pain of forfeiture, according to divers Statutes, unlesse the licence of the King, with the consent of the Lords mediate and immediate, be first therein had and obtained; for such custome is in that behalf qualified and restrained, upon the pain

pain aforesaid by the Statutes of *mortmaine*, (viz.) *Magna Charta*. A custom that beganne onely since the Statute, cannot be good; for every custome that may evidently appear to have his beginning since the time of *R.* 1. is voyd in law, as appeareth by 33 *H.* 6. 27. 9 *H.* 6. & *Littleton* 38. yet nevertheless the customes to devise *mortmaine*, are not abrogated by any of the said Statutes; for the devise, or other form of alienation in *mortmaine*, is not by any of the said Statutes made voyd, but it is onely in advantage of the Lords, who might sustein losse thereby, prohibited upon pain of such forfeiture to them accrewing, as thereby appeareth; so that by license and consent as aforesaid, a devise in *mortmaine*, by force of a custom, may stand good in Law, without danger of the penalty of forfeiture.

Concerning the fourth observation; if the custome be not lawfull and reasonable, it is voyd; so that a devise by vertue thereof, cannot be of any force in Law. And therefore, if an alien do purchase and devise Lands lying within a

certain Borrough by force of a cuſtome, that Lands and Tenements within the ſame Borrough are deviſable to aliens in Fee to their owne uſe, and by them deviſable by Teſtament; this deviſe is void: for ſuch cuſtome againſt the Kings prerogative is unlawfull; albeit his Highneſſe cannot be thereunto entitled without office or other matter of Record, yet mean between ſuch purchaſe and office found, &c. I take the Alien to be pernour of the profits, and that the eſtate purchaſed is forthwith in conſideration of the ſame Lands, until the Kings Title do appear by office or other matter of record. Alſo it is to be obſerved, that a cuſtom to deviſe a Right, ſeparated from the poſſeſſion, cannot be lawfull, becauſe it ſavoureth of maintenance. As touching unreaſonable cuſtomes: if the cuſtome within any City or Burrough be, that Tenements therein ſituate are deviſable by Infants, Ideots, or mad men, it is unreaſonable, and therefore void. But a cuſtome, that the ſame be deviſable by Children of fourteen years is good.

Concerning the fifth Obſervation; if the intent of the Deviſor be uncertain, unlawfull,

unlawfull, or impoſſible; the deviſe will be of no force in Law. The intent of the deviſor may be uncertain, either in the perſon to whom he doth deviſe, or in the thing deviſed, or in the eſtate that ſhould paſſe thereby. And firſt concerning the perſon, it appeareth 49 *E.* 3. 3. one *Jorden* did deviſe certain Tenements in *London* to one for Life, ſo that after his deceaſe the ſame ſhould remain unto two of the better ſort of the fraternity of *London:* this remainder was agreed to be void for want of certainty, which perſons of the fraternity ſhould have the ſame. Secondly, as concerning the certainty in the thing deviſed; as for example, if a man ſeiſed of lands or tenements deviſable, doth by Will bequeath a portion thereof to *I. S.* this deviſe is void, becauſe it doth not appear what or how great a portion thereof the Deviſee ſhould have by force of the ſaid Will. 3. Albeit the intent of the deviſor doth certainly appear, and the perſons to whom the deviſe is made, and in the Lands and Tenements deviſed; yet if the Eſtate therein limitted be ſo uncertain, that neither by matter expreſſed, or implyed in the

Will, nor by a common Intendement it cannot be reduced into a certainty, the deviſe will be void in law. And therefore, if a man ſeiſed of Lands deviſable as well by Will nuncupative, as by writing, doth by Will in writing amongſt other things bequeath the ſame to *I. S.* for ſuch eſtate as is ſpecified in a ſchedule thereunto annexed, and then the deviſor dyeth without annexing any ſchedule to the ſaid Will, or other declaration of the certainty of the ſtate; this deviſe is void in law. Now it is to be conſidered, that albeit the intent of the deviſor be certain in all things, that nevertheleſſe though it be unlawfull, the ſame will be no force. And therefore, it is alſo needfull to diſcern, where and in what caſe the intent of the deviſor is unlawfull, and where not: and the intent of the deviſor is unlawfull, when it is ſo repugnant to the Rules of the Law, as that by any Counſell learned in the Law, it could take no effect by Conveyance executed in his life-time; as for example, a deviſe of a naked right, or poſſibility of a remainder to depend upon an eſtate in the ſimple thereby bequeathed, is ſaid to be unlawfull; for as no ſuch remainder

mainder could be bequeathed, *id est*, conveyed by any Act executed in a mans life, ſo alſo no bare right could be conveyed by the like Act executed in his life to any perſon, other than ſuch as were ſeiſed, or to be ſeiſed of the free-hold of the ſame lands at the inſtant of the execution of the conveyance, and that only by way of the extinguiſhment. And hereupon it followeth, that a man having right to lands deviſable, being by deſeiſable Title in the poſſeſſion of *I. S.* cannot deviſe the ſame by Will to *I. D.* So alſo the Lord, of whom the lands deviſable are immediately holden by Knights ſervice, cannot deviſe his poſſibility of Eſcheates or wardſhip, that may thereof accrew to him, when his Tenant ſhall happen to die without heires; or the poſſibility of wards, when the heirs ſhall be within age.

Concerning an intent impoſſible, we term that an impoſſible intent, which by no probable and common poſſibility can be accompliſhed; and of ſuch impoſſible intents, there are three ſorts: 1. Impoſſible both at the time of the making of the Will, and alſo at the death of the deviſor: 2. Impoſſible only

at the time of the deviſe, and not at the time of the deceaſe of the Teſtator. 3. Impoſſible at the time of the making of the deviſe. And as to the firſt ſort of Lands deviſable by Will, bequeathed to the heirs of *S.* who was attainted of Felony or Treaſon, unreverſed at the time of the deviſe, or death of the deviſor; or if in time of Romiſh Religion, ſuch deviſe was made to one that was a Monk, being not deraigned at the time of the deviſe, or death of the Teſtator; or if the ſame be deviſed to the heires of *I. D.* who was then dead without heire; or to a Corporation that had no being at the time of the Will, or death of the Teſtator; Or if a man by his Will do deviſe a certain houſe in a Burrough, wherein at the time of his deyiſe and death, he had nothing: Or if lands be deviſed to the executors of *I. S.* who died inteſtate; in every of theſe caſes, the intent of the deviſor was impoſſible, both at the time of the deviſe and death of the deviſor; and for ſuch impoſſibility, the deviſes are abſolutely void.

Concerning the ſecond ſort, if lands were deviſed to a Monk, who at the time

time of death of the teſtator was deraigned, or to the heirs of one that is attainted of, *&c.* which is afterwards reverſed before his death; or to a Corporation that hath a being at the time of his death, but not created at the time of the deviſe: in theſe caſes, the intent of the deviſor was only impoſſible at the time of the deviſe, but not at the time of deceaſe of the teſtator. And yet I take the Law, that thoſe deviſes be alſo voyd: *nam quod ab initio non valet, id tractu temporis non convaleſcit.*

The ſixth Obſervation is, that the deviſe be not countermanded; for it is a clear caſe, that it is countermandable at the pleaſure of the Deviſor, or thereby the deviſe will be of no force in Law. And it is to be noted, that there are two kinds of Countermands, the one is a Countermand in deed, the other a Countermand in Law. A Countermand in deed, is when a Teſtator doth expreſly revoke his Will formerly made, or any part thereof; and this Countermand by word is of no leſſe force than if it were by writing; for albeit, the Will contain, amongſt other things, deviſes of Lands, be it in Writing, as an effectuall part

thereof, in caſe where the cuſtome or law doth ſo require it; yet nevertheleſſe, an expreſſe countermand by word of the Will, or of any deviſe of lands therein compriſed, will be ſufficient in Law to controle the ſame, as it appeareth by *Ketts* caſe, 14 *El.* Alſo, if after the making of the Will, the Teſtator doth cauſe a deviſe therein made to one man to be quite ſtricken out; this is alſo a countermand in deed of that deviſe, and the Will ſtandeth good for all the reſidue. A countermand which in Law, is that which neither by Word nor Deed is expreſſed, but only in thoſe other acts implyed. As for example, the making of another Will doth imply a revocation of the former, and therefore it is a countermand in Law thereof. So likewiſe if lands be deviſed by Will, and afterwards the deviſor infeoffeth a ſtranger in Fee thereof, this Feoffment doth imply a revocation of the deviſe of the land, and therefore it is in that part a countermand in Law, albeit he afterwards repurchaſe the ſame. 44 *Ed.* 3. 33. And although lands deviſable by cuſtome may be executed by a Writ of *ex gravi querela*, yet if there be no ſpeciall cuſtome to the contrary, the deviſee

deviſee may (if he pleaſe) execute the ſame by Entry, as it appeareth by 38 *Aſſ. plit.* 12. 40. *Aſſ. p.* 2. 27. *Aſſ. p.* 60. And in every ſuch caſe the poſſeſſion in Law of the thing deviſed, is immediately after the deceaſe of the Teſtator, no leſſe caſt upon the Deviſee, than it ſhould have been caſt upon the heir, if no deviſe had been thereof made, as appeareth *Brookes Title deviſe*, 490.

Conveyances by Will, by force of the Statute of 32 *and* 34 *H.* 8.

ALthough Lands and Tenements, wherein a man had any greater eſtate than for years, were not deviſable by the common Law; yet until the making of the Statute 27 H. 8. cap. 10. *de uſubus in poſſeſſionem transferendis*, men did commonly put their Lands in uſe; (*viz.*) they did enfeoff others in Fee, to the uſe of themſelves and their heirs, to the end that they might deviſe the ſame uſe; and by force thereof, after the deceaſe of the Teſtator, the Feoffees did at the requeſt of ſuch deviſee, make and execute to them an eſtate in the Land according

to

to the uſe deviſed: and if the Feoffees did refuſe ſo to do, the deviſee might thereunto compell him by ſute in the *Chancery*. And ſo by ſuch ſubtill invention, the deviſee obteined the effect of a deviſe of the ſame Lands or Tenements, which were not then deviſable by Law.

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